

Senate Bill 391

By: Senators Hill of the 6th, Harbison of the 15th and Millar of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 45 of the Official Code of Georgia Annotated, relating to public officers and
2 employees, so as to change certain provisions of the "Fair Employment Practices Act of
3 1978" and personnel administration in order to expand the definition of discrimination to
4 include differential or preferential treatment for any reason other than that of individual
5 merit, performance, qualifications, or noncompliance with standards of presentation; to
6 change and add certain definitions; to provide for related matters; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

10 Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees,
11 is amended by revising Code Section 45-19-21, relating to the purposes and construction of
12 the "Fair Employment Practices Act of 1978," as follows:

13 "45-19-21.

14 (a) The general purposes of this article are:

15 (1) To provide for execution within public employment in ~~the~~ this state of the policies
16 embodied in Title VII of the federal Civil Rights Act of 1964 (78 Stat. 241), as amended
17 by the Equal Employment Opportunity Act of 1972 (86 Stat. 103), as from time to time
18 amended, the federal Age Discrimination in Employment Act of 1967 (81 Stat. 602), as
19 from time to time amended, and the federal Rehabilitation Act of 1973 (87 Stat. 355), as
20 from time to time amended;

21 (2) To safeguard all individuals in public employment from discrimination in
22 employment; and

23 (3) To promote the elimination of discrimination against all individuals in public
24 employment because of such individuals' race, color, religion, national origin, sex,
25 disability, ~~or age,~~ or any reason other than that of individual merit, performance,
26 qualifications, or noncompliance with standards of presentation thereby to promote the

27 protection of their interest in personal dignity and freedom from humiliation; to make
 28 available to ~~the~~ this state their full productive capacities; to secure ~~the~~ this state against
 29 domestic strife and unrest which would menace its democratic institutions; to preserve
 30 the public safety, health, and general welfare; and to further the interests, rights, and
 31 privileges of individuals within ~~the~~ this state.

32 (b) This article shall be broadly construed to further the general purposes stated in this
 33 Code section and the special purposes of the particular provision involved.

34 (c) Nothing in this article shall be construed as indicating an intent to exclude local or
 35 federal laws on the same subject matter, which laws are not inconsistent with this article.

36 (d) Nothing contained in this article shall be deemed to repeal any other nonconflicting law
 37 of this state relating to discrimination because of race, color, religion, national origin, sex,
 38 disability, ~~or~~ age, or any reason other than that of individual merit, performance,
 39 qualifications, or noncompliance with standards of presentation."

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SECTION 2.

41 Said title is further amended by revising paragraph (4) of and adding a new paragraph to
 42 Code Section 45-19-22, relating to definitions for the "Fair Employment Practices Act of
 43 1978," to read as follows:

44 "(4) 'Discrimination' means any direct or indirect act or practice of exclusion, distinction,
 45 restriction, segregation, limitation, refusal, denial, or any other act or practice of
 46 differentiation or preference in the treatment of a person or persons because of race,
 47 color, religion, national origin, sex, handicap, ~~or~~ age, or any reason other than that of
 48 individual merit, performance, qualifications, or noncompliance with standards of
 49 presentation or the aiding, abetting, inciting, coercing, or compelling of such an act or
 50 practice. This term shall not include any direct or indirect act or practice of exclusion,
 51 distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice
 52 of differentiation or preference in the treatment of a person or persons because of religion
 53 if an employer demonstrates that the employer is unable to accommodate reasonably an
 54 employee's or prospective employee's religious observance or practice without undue
 55 hardship on the conduct of the employer's operation."

56 "(7.1) 'Standards of presentation' means any job requirements provided by the employer
 57 to the employee in writing pertaining to cleanliness, uniforms, style or manner of dress,
 58 or personal grooming when uniformly applied to a class of employees for a reasonable
 59 business purpose or for the health, welfare, or safety of such employees."

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SECTION 3.

61 Said title is further amended by revising paragraphs (8) and (14) of Code Section 45-19-27,
 62 relating to additional powers and duties of the administrator of the Commission on Equal
 63 Opportunity, as follows:

64 "(8) To receive, initiate, investigate, seek to conciliate, and make determinations
 65 regarding complaints alleging violations of this article and to approve or disapprove plans
 66 required by the Governor to eliminate or reduce imbalance in employment with respect
 67 to race, color, disability, religion, sex, national origin, ~~or~~ age, or any reason other than
 68 that of individual merit, performance, qualifications, or noncompliance with standards
 69 of presentation;"

70 "(14) To adopt, promulgate, amend, and rescind, subject to approval of the board and the
 71 Governor and after giving proper notice and hearing to all public employers pursuant to
 72 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such rules and
 73 regulations as may be necessary to carry out the provisions of this article, including
 74 regulations requiring the posting or inclusion in advertising material of notices prepared
 75 or approved by the administrator and regulations regarding the filing, approval, or
 76 disapproval of plans to eliminate or reduce imbalance in employment with respect to race,
 77 color, disability, religion, sex, national origin, ~~or~~ age, or any reason other than that of
 78 individual merit, performance, qualifications, or noncompliance with standards of
 79 presentation;"

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SECTION 4.

81 Said title is further amended by revising Code Section 45-19-29, relating to unlawful
 82 practices generally relative to fair employment practices, as follows:

83 "45-19-29.

84 It is an unlawful practice for an employer:

85 (1) To fail or refuse to hire, to discharge, or otherwise to discriminate against any
 86 individual with respect to the individual's compensation, terms, conditions, or privileges
 87 of employment because of such individual's race, color, religion, national origin, sex,
 88 disability, ~~or~~ age, or any reason other than that of individual merit, performance,
 89 qualifications, or noncompliance with standards of presentation;

90 (2) To limit, segregate, or classify his or her employees in any way which would deprive
 91 or tend to deprive an individual of employment opportunities or otherwise adversely
 92 affect an individual's status as an employee because of such individual's race, color,
 93 religion, national origin, sex, disability, ~~or~~ age, or any reason other than that of individual
 94 merit, performance, qualifications, or noncompliance with standards of presentation; or

95 (3) To hire, promote, advance, segregate, or affirmatively hire an individual ~~solely~~
 96 because of race, color, religion, national origin, sex, disability, ~~or age, or any reason other~~
 97 than that of individual merit, performance, qualifications, or noncompliance with
 98 standards of presentation, but this paragraph shall not prohibit an employer from
 99 voluntarily adopting and carrying out a plan to fill vacancies or hire new employees in
 100 a manner to eliminate or reduce imbalance in employment with respect to race, color,
 101 disability, religion, sex, national origin, ~~or age, or any reason other than that of individual~~
 102 merit, performance, qualifications, or noncompliance with standards of presentation if the
 103 plan has first been filed with the administrator for review and comment for a period of
 104 not less than 30 days."

105 **SECTION 5.**

106 Said title is further amended by revising Code Section 45-19-30, relating to unlawful
 107 practices in training or apprenticeship programs, as follows:

108 "45-19-30.

109 It is an unlawful practice for an employer controlling apprenticeship or other training or
 110 retraining, including on-the-job training programs, to discriminate against an individual
 111 because of such individual's race, color, religion, national origin, sex, disability, ~~or age, or~~
 112 any reason other than that of individual merit, performance, qualifications, or
 113 noncompliance with standards of presentation in admission to or employment in any
 114 program established to provide apprenticeship or other training ~~or to discriminate by~~
 115 ~~allowing admission or promotion to an apprenticeship or training program solely because~~
 116 ~~of race, color, religion, national origin, sex, disability, or age."~~

117 **SECTION 6.**

118 Said title is further amended by revising Code Section 45-19-31, relating to unlawful
 119 practices in advertisement of employment, as follows:

120 "45-19-31.

121 It is an unlawful practice for an employer to print or publish or cause to be printed or
 122 published a notice or advertisement relating to employment by such an employer indicating
 123 any preference, limitation, specification, or discrimination based on race, color, religion,
 124 national origin, sex, disability, ~~or age, or any reason other than that of individual merit,~~
 125 performance, qualifications, or noncompliance with standards of presentation, except that
 126 such a notice or advertisement may indicate a preference, limitation, or specification based
 127 on race, color, religion, national origin, sex, disability, or age when religion, national
 128 origin, sex, disability, or age is a bona fide occupational qualification for employment."

129 **SECTION 7.**

130 Said title is further amended by revising Code Section 45-19-33, relating to different
 131 standards of compensation or different terms and conditions of employment where not based
 132 on race, color, religion, sex, national origin, disability, or age, as follows:

133 "45-19-33.

134 It is not an unlawful practice for an employer to apply different standards of compensation
 135 or different terms, conditions, or privileges of employment pursuant to a bona fide seniority
 136 or merit system, or a system which measures earnings by quantity or quality of production,
 137 or to employees who work in different locations, provided that such differences are not the
 138 result of an intention to discriminate because of race, color, religion, national origin, sex,
 139 disability, ~~or age, or any reason other than that of individual merit, performance,~~
 140 qualifications, or noncompliance with standards of presentation; nor is it an unlawful
 141 practice for an employer to give and to act upon the results of any professionally developed
 142 ability test, provided that such test, its administration, or action upon the results thereof is
 143 not designed, intended, or used to discriminate because of race, color, religion, national
 144 origin, sex, disability, ~~or age, or any reason other than that of individual merit,~~
 145 performance, qualifications, or noncompliance with standards of presentation."

146 **SECTION 8.**

147 Said title is further amended by revising subsections (b) and (c) of Code Section 45-19-35,
 148 relating to use of quotas because of imbalances in employee ratios prohibited, grants of
 149 preferential treatment to certain individuals or groups not required by the "Fair Employment
 150 Practices Act of 1978," adoption of plans required by Governor to reduce imbalance, and
 151 effect of said Act upon certain employment practices, as follows:

152 "(b) Nothing contained in this article requires an employer to grant preferential treatment
 153 to an individual or to a group because of the race, color, religion, national origin, sex,
 154 disability, ~~or age, or any reason other than that of individual merit, performance,~~
 155 qualifications, or noncompliance with standards of presentation of the individual or group
 156 on account of an imbalance which may exist with respect to the total number or percentage
 157 of persons of any ~~race, color, religion, national origin, sex, disability, or age~~ particular
 158 group in the this state or a community, section, or other area or in the available work force
 159 in ~~the this~~ state or a community, section, or other area.

160 (c) It is specifically provided that neither subsection (a) nor (b) of this Code section nor
 161 any other provision of this article shall prohibit an employer from adopting or carrying out
 162 a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance
 163 in employment with respect to race, color, disability, religion, sex, national origin, ~~or age,~~
 164 or any reason other than that of individual merit, performance, qualifications, or

165 noncompliance with standards of presentation if such plan is required by the Governor and
 166 filed with and approved by the administrator prior to its final adoption and
 167 implementation."

168 **SECTION 9.**

169 Said title is further amended by revising paragraph (7) of subsection (c) of Code
 170 Section 45-19-38, relating to findings, conclusions, and order of special master generally and
 171 order to cease and desist from unlawful practice and to take remedial action, as follows:

172 "(7) Recommending to the Governor that the respondent be required to adopt and file
 173 with the administrator, within a specified time limitation, for the administrator's approval
 174 a plan to fill vacancies or hire new employees in a manner to eliminate or reduce
 175 imbalance in employment with respect to race, color, disability, religion, sex, national
 176 origin, ~~or~~ age, or any reason other than that of individual merit, performance,
 177 qualifications, or noncompliance with standards of presentation."

178 **SECTION 10.**

179 Said title is further amended by revising paragraph (1) of subsection (b) of Code
 180 Section 45-20-1, relating to purposes and principles relative to personnel administration, as
 181 follows:

182 "(1) Assuring fair treatment of applicants and employees in all aspects of personnel
 183 administration without regard to race, color, national origin, sex, age, disability, religious
 184 creed, ~~or~~ political affiliations, or any reason other than that of individual merit,
 185 performance, qualifications, or noncompliance with standards of presentation. This '~~fair~~
 186 ~~treatment~~' fair treatment principle includes compliance with all state and federal equal
 187 employment opportunity and nondiscrimination laws;"

188 **SECTION 11.**

189 Said title is further amended by adding a new paragraph to Code Section 45-20-2, relating
 190 to definitions relative to personnel administration, to read as follows:

191 "(10.1) 'Standards of presentation' means any job requirements provided by the employer
 192 to the employee in writing pertaining to cleanliness, uniforms, style or manner of dress,
 193 or personal grooming when uniformly applied to a class of employees for a reasonable
 194 business purpose or for the health, welfare, or safety of such employees."

195 **SECTION 12.**

196 Said title is further amended by revising paragraph (2) of Code Section 45-20-4, relating to
 197 the duties and responsibilities of the commissioner in the administration of this chapter, as
 198 follows:

199 "(2) To submit to the Governor the rules and regulations adopted by the board. Such
 200 rules and regulations when approved by the Governor shall have the force and effect of
 201 law and shall be binding upon the state departments covered by this article and shall
 202 include provisions for the establishment and maintenance of classification and
 203 compensation plans, the conduct of examinations, appointments, promotions, transfers,
 204 demotions, appeals of classified employees, reports of performance, payroll certification,
 205 and other phases of personnel administration. Such rules and regulations shall define and
 206 prohibit improper political activity by any departmental employee of the State Personnel
 207 Board or any employee covered under the terms of this article and shall provide that there
 208 shall be no discrimination for or against any person or employee in any manner, to
 209 include, but not be limited to, hiring, discharge, compensation, benefits, terms or
 210 conditions of employment, promotion, job classification, transfer, privileges, or demotion
 211 because of political affiliation, religious affiliation, race, creed, national origin, sex, age
 212 between 40 and 70 years, or physical disability, or any reason other than that of
 213 individual merit, performance, qualifications, or noncompliance with standards of
 214 presentation. Such rules and regulations shall conform to the minimum standards for
 215 merit systems of personnel administration as specified by those federal departments from
 216 which federal funds are obtained for use by the several state departments covered by this
 217 article. Compensation plans and modifications thereto promulgated under the rules and
 218 regulations of the commissioner shall become effective as adopted upon approval ~~of~~ by
 219 the director of the Office of Planning and Budget;"

220 **SECTION 13.**

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