

House Bill 323

By: Representatives Drenner of the 85th, Willard of the 51st, Jacobs of the 80th, Abrams of the 89th, Kidd of the 145th, and others

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 relating to the "Fair Employment Practices Act
3 of 1978" and the merit system in order to prohibit discrimination based on sexual orientation;
4 to add definitions; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "45-19-21.

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

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

19 (2) To safeguard all individuals in public employment from discrimination in
20 employment; and

21 (3) To promote the elimination of discrimination against all individuals in public
22 employment because of such individuals' race, color, religion, national origin, sex, sexual
23 orientation, disability, or age thereby to promote the protection of their interest in
24 personal dignity and freedom from humiliation; to make available to ~~the~~ this state their
25 full productive capacities; to secure ~~the~~ this state against domestic strife and unrest which
26 would menace its democratic institutions; to preserve the public safety, health, and

27 general welfare; and to further the interests, rights, and privileges of individuals within
 28 ~~the~~ this state.

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

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

33 (d) Nothing contained in this article shall be deemed to repeal any other nonconflicting law
 34 of this state relating to discrimination because of race, color, religion, national origin, sex,
 35 sexual orientation, disability, or age."

36 SECTION 2.

37 Said title is further amended by revising paragraph (4) of Code Section 45-19-22, relating
 38 to definitions relative to the "Fair Employment Practices Act of 1978," as follows:

39 "(4) 'Discrimination' means any direct or indirect act or practice of exclusion, distinction,
 40 restriction, segregation, limitation, refusal, denial, or any other act or practice of
 41 differentiation or preference in the treatment of a person or persons because of race,
 42 color, religion, national origin, sex, sexual orientation, handicap, or age or the aiding,
 43 abetting, inciting, coercing, or compelling of such an act or practice. This term shall not
 44 include any direct or indirect act or practice of exclusion, distinction, restriction,
 45 segregation, limitation, refusal, denial, or any other act or practice of differentiation or
 46 preference in the treatment of a person or persons because of religion if an employer
 47 demonstrates that the employer is unable to accommodate reasonably an employee's or
 48 prospective employee's religious observance or practice without undue hardship on the
 49 conduct of the employer's operation."

50 SECTION 3.

51 Said title is further amended by adding a new paragraph to Code Section 45-19-22, relating
 52 to definitions relative to the "Fair Employment Practices Act of 1978," to read as follows:

53 "(7.1) 'Sexual orientation' means a person's actual or perceived heterosexuality,
 54 bisexuality, homosexuality, or gender related identity or expression."

55 SECTION 4.

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

59 "(8) To receive, initiate, investigate, seek to conciliate, and make determinations
 60 regarding complaints alleging violations of this article and to approve or disapprove plans

61 required by the Governor to eliminate or reduce imbalance in employment with respect
 62 to race, color, disability, religion, sex, sexual orientation, national origin, or age;"

63 "(14) To adopt, promulgate, amend, and rescind, subject to approval of the board and the
 64 Governor and after giving proper notice and hearing to all public employers pursuant to
 65 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such rules and
 66 regulations as may be necessary to carry out the provisions of this article, including
 67 regulations requiring the posting or inclusion in advertising material of notices prepared
 68 or approved by the administrator and regulations regarding the filing, approval, or
 69 disapproval of plans to eliminate or reduce imbalance in employment with respect to race,
 70 color, disability, religion, sex, sexual orientation, national origin, or age;"

71 SECTION 5.

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

74 "45-19-29.

75 It is an unlawful practice for an employer:

- 76 (1) To fail or refuse to hire, to discharge, or otherwise to discriminate against any
 77 individual with respect to the individual's compensation, terms, conditions, or privileges
 78 of employment because of such individual's race, color, religion, national origin, sex,
 79 sexual orientation, disability, or age;
- 80 (2) To limit, segregate, or classify his or her employees in any way which would deprive
 81 or tend to deprive an individual of employment opportunities or otherwise adversely
 82 affect an individual's status as an employee because of such individual's race, color,
 83 religion, national origin, sex, sexual orientation, disability, or age; or
- 84 (3) To hire, promote, advance, segregate, or affirmatively hire an individual solely
 85 because of race, color, religion, national origin, sex, sexual orientation, disability, or age,
 86 but this paragraph shall not prohibit an employer from voluntarily adopting and carrying
 87 out a plan to fill vacancies or hire new employees in a manner to eliminate or reduce
 88 imbalance in employment with respect to race, color, disability, religion, sex, sexual
 89 orientation, national origin, or age if the plan has first been filed with the administrator
 90 for review and comment for a period of not less than 30 days."

91 SECTION 6.

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

94 "45-19-30.

95 It is an unlawful practice for an employer controlling apprenticeship or other training or
96 retraining, including on-the-job training programs, to discriminate against an individual
97 because of such individual's race, color, religion, national origin, sex, sexual orientation,
98 disability, or age in admission to or employment in any program established to provide
99 apprenticeship or other training or to discriminate by allowing admission or promotion to
100 an apprenticeship or training program solely because of race, color, religion, national
101 origin, sex, sexual orientation, disability, or age."

102 **SECTION 7.**

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

105 "45-19-31.

106 It is an unlawful practice for an employer to print or publish or cause to be printed or
107 published a notice or advertisement relating to employment by such an employer indicating
108 any preference, limitation, specification, or discrimination based on race, color, religion,
109 national origin, sex, sexual orientation, disability, or age, except that such a notice or
110 advertisement may indicate a preference, limitation, or specification based on race, color,
111 religion, national origin, sex, sexual orientation, disability, or age when religion, national
112 origin, sex, sexual orientation, disability, or age is a bona fide occupational qualification
113 for employment."

114 **SECTION 8.**

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

118 "45-19-33.

119 It is not an unlawful practice for an employer to apply different standards of compensation
120 or different terms, conditions, or privileges of employment pursuant to a bona fide seniority
121 or merit system, or a system which measures earnings by quantity or quality of production,
122 or to employees who work in different locations, provided that such differences are not the
123 result of an intention to discriminate because of race, color, religion, national origin, sex,
124 sexual orientation, disability, or age; nor is it an unlawful practice for an employer to give
125 and to act upon the results of any professionally developed ability test, provided that such
126 test, its administration, or action upon the results thereof is not designed, intended, or used
127 to discriminate because of race, color, religion, national origin, sex, sexual orientation,
128 disability, or age."

129 **SECTION 9.**

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

135 "(b) Nothing contained in this article requires an employer to grant preferential treatment
 136 to an individual or to a group because of the race, color, religion, national origin, sex,
 137 sexual orientation, disability, or age of the individual or group on account of an imbalance
 138 which may exist with respect to the total number or percentage of persons of any race,
 139 color, religion, national origin, sex, sexual orientation, disability, or age in ~~the~~ this state or
 140 a community, section, or other area or in the available work force in ~~the~~ this state or a
 141 community, section, or other area.

142 (c) It is specifically provided that neither subsection (a) nor (b) of this Code section nor
 143 any other provision of this article shall prohibit an employer from adopting or carrying out
 144 a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance
 145 in employment with respect to race, color, disability, religion, sex, sexual orientation,
 146 national origin, or age if such plan is required by the Governor and filed with and approved
 147 by the administrator prior to its final adoption and implementation."

148 **SECTION 10.**

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

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

157 **SECTION 11.**

158 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
 159 45-20-1, relating to purposes and principles relative to personnel administration, as follows:

160 "(1) Assuring fair treatment of applicants and employees in all aspects of personnel
 161 administration without regard to race, color, national origin, sex, sexual orientation, age,
 162 disability, religious creed, or political affiliations. This 'fair treatment' principle includes

163 compliance with all state and federal equal employment opportunity and
 164 nondiscrimination laws;"

165 **SECTION 12.**

166 Said title is further amended by adding a new paragraph to Code Section 45-20-2, relating
 167 to definitions relative to the merit system generally, to read as follows:

168 "(10.1) 'Sexual orientation' means a person's actual or perceived heterosexuality,
 169 bisexuality, homosexuality, or gender related identity or expression."

170 **SECTION 13.**

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

174 "(2) To submit to the Governor the rules and regulations adopted by the board. Such
 175 rules and regulations when approved by the Governor shall have the force and effect of
 176 law and shall be binding upon the state departments covered by this article and shall
 177 include provisions for the establishment and maintenance of classification and
 178 compensation plans, the conduct of examinations, appointments, promotions, transfers,
 179 demotions, appeals of classified employees, reports of performance, payroll certification,
 180 and other phases of personnel administration. Such rules and regulations shall define and
 181 prohibit improper political activity by any departmental employee of the State Personnel
 182 Board or any employee covered under the terms of this article and shall provide that there
 183 shall be no discrimination for or against any person or employee in any manner, to
 184 include, but not be limited to, hiring, discharge, compensation, benefits, terms or
 185 conditions of employment, promotion, job classification, transfer, privileges, or demotion
 186 because of political affiliation, religious affiliation, race, creed, national origin, sex,
 187 sexual orientation, age between 40 and 70 years, or physical disability. Such rules and
 188 regulations shall conform to the minimum standards for merit systems of personnel
 189 administration as specified by those federal departments from which federal funds are
 190 obtained for use by the several state departments covered by this article. Compensation
 191 plans and modifications thereto promulgated under the rules and regulations of the
 192 commissioner shall become effective as adopted upon approval ~~of~~ by the director of the
 193 Office of Planning and Budget;"

194 **SECTION 14.**

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