

House Bill 427

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 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 state their full
25 productive capacities; to secure the state against domestic strife and unrest which would

26 menace its democratic institutions; to preserve the public safety, health, and general
27 welfare; and to further the interests, rights, and privileges of individuals within the state.

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

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

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

35 **SECTION 2.**

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

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

49 **SECTION 3.**

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

52 "(4.1) 'Sexual orientation' means a person's actual or perceived heterosexuality,
53 bisexuality, homosexuality, or gender related identity or expression."

54 **SECTION 4.**

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

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

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

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

70 SECTION 5.

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

73 "45-19-29.

74 It is an unlawful practice for an employer:

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

90 SECTION 6.

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

93 "45-19-30.

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

101 **SECTION 7.**

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

104 "45-19-31.

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

113 **SECTION 8.**

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

117 "45-19-33.

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

128 **SECTION 9.**

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

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

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

147 **SECTION 10.**

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

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

156 **SECTION 11.**

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

159 "(10.1) 'Sexual orientation' means a person's actual or perceived heterosexuality,
 160 bisexuality, homosexuality, or gender related identity or expression."

161 **SECTION 12.**

162 Said title is further amended by revising paragraph (1) of subsection (b) of Code Section
163 45-20-1, relating to purposes and principles relative to personnel administration, as follows:

164 "(1) Assuring fair treatment of applicants and employees in all aspects of personnel
165 administration without regard to race, color, national origin, sex, sexual orientation, age,
166 disability, religious creed, or political affiliations. This 'fair treatment' principle includes
167 compliance with all state and federal equal employment opportunity and
168 nondiscrimination laws;"

169 **SECTION 13.**

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

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

193 **SECTION 14.**

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