

The Senate Committee on Special Judiciary offered the following substitute to SB 391:

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 on the basis of sexual orientation, gender
5 identity, or for any reason other than that of individual merit, performance, qualifications,
6 or noncompliance with standards of presentation; to change and add certain definitions; to
7 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 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,~~ sexual orientation, gender identity, or any reason other than that of
26 individual merit, performance, qualifications, or noncompliance with standards of

27 presentation thereby to promote the protection of their interest in personal dignity and
 28 freedom from humiliation; to make available to ~~the~~ this state their full productive
 29 capacities; to secure ~~the~~ this state against domestic strife and unrest which would menace
 30 its democratic institutions; to preserve the public safety, health, and general welfare; and
 31 to further the interests, rights, and 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, sexual orientation, gender identity, or any reason other than that of
 39 individual merit, performance, qualifications, or noncompliance with standards of
 40 presentation."

41 SECTION 2.

42 Said title is further amended by revising paragraph (4) of and adding a new paragraph to
 43 Code Section 45-19-22, relating to definitions for the "Fair Employment Practices Act of
 44 1978," to read as follows:

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

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

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SECTION 3.

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

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

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

SECTION 4.

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

"45-19-29.

It is an unlawful practice for an employer:

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

(2) To limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, religion, national origin, sex, disability, ~~or~~ age, sexual orientation, gender identity, or any

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

110 **SECTION 5.**

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

113 "45-19-30.

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

122 **SECTION 6.**

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

125 "45-19-31.

126 It is an unlawful practice for an employer to print or publish or cause to be printed or
 127 published a notice or advertisement relating to employment by such an employer indicating
 128 any preference, limitation, specification, or discrimination based on race, color, religion,
 129 national origin, sex, disability, ~~or age,~~ sexual orientation, gender identity, or any reason
 130 other than that of individual merit, performance, qualifications, or noncompliance with
 131 standards of presentation, except that such a notice or advertisement may indicate a

132 preference, limitation, or specification based on race, color, religion, national origin, sex,
 133 disability, or age when religion, national origin, sex, disability, or age is a bona fide
 134 occupational qualification for employment."

135 SECTION 7.

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

139 "45-19-33.

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

153 SECTION 8.

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

159 "(b) Nothing contained in this article requires an employer to grant preferential treatment
 160 to an individual or to a group because of the race, color, religion, national origin, sex,
 161 disability, ~~or age~~, sexual orientation, gender identity, or any reason other than that of
 162 individual merit, performance, qualifications, or noncompliance with standards of
 163 presentation of the individual or group on account of an imbalance which may exist with
 164 respect to the total number or percentage of persons of any ~~race, color, religion, national~~
 165 ~~origin, sex, disability, or age~~ particular group in the this state or a community, section, or

166 other area or in the available work force in ~~the~~ this state or a community, section, or other
167 area.

168 (c) It is specifically provided that neither subsection (a) nor (b) of this Code section nor
169 any other provision of this article shall prohibit an employer from adopting or carrying out
170 a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance
171 in employment with respect to race, color, disability, religion, sex, national origin, ~~or~~ age,
172 sexual orientation, gender identity, or any reason other than that of individual merit,
173 performance, qualifications, or noncompliance with standards of presentation if such plan
174 is required by the Governor and filed with and approved by the administrator prior to its
175 final adoption and implementation."

176 **SECTION 9.**

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

180 "(7) Recommending to the Governor that the respondent be required to adopt and file
181 with the administrator, within a specified time limitation, for the administrator's approval
182 a plan to fill vacancies or hire new employees in a manner to eliminate or reduce
183 imbalance in employment with respect to race, color, disability, religion, sex, national
184 origin, ~~or~~ age, sexual orientation, gender identity, or any reason other than that of
185 individual merit, performance, qualifications, or noncompliance with standards of
186 presentation."

187 **SECTION 10.**

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

191 "(1) Assuring fair treatment of applicants and employees in all aspects of personnel
192 administration without regard to race, color, national origin, sex, age, disability, religious
193 creed, ~~or~~ political affiliations, sexual orientation, gender identity, or any reason other than
194 that of individual merit, performance, qualifications, or noncompliance with standards
195 of presentation. This ~~'fair treatment'~~ fair treatment principle includes compliance with all
196 state and federal equal employment opportunity and nondiscrimination laws;"

197 **SECTION 11.**

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

200 "(10.1) 'Standards of presentation' means any job requirements provided by the employer
 201 to the employee in writing pertaining to cleanliness, uniforms, style or manner of dress,
 202 or personal grooming when uniformly applied to a class of employees for a reasonable
 203 business purpose or for the health, welfare, or safety of such employees."

204 **SECTION 12.**

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

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

229 **SECTION 13.**

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