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Statutory Authority: 1-13-70

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Subject: Preservation of Records in Event of Charge of Discrimination

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By Date Action Description Jt. Res. No. Expiration Date

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- 01/10/2017 Received by Lt. Gov & Speaker 05/10/2017

H 01/10/2017 Referred to Committee

S 01/10/2017 Referred to Committee

H 03/07/2017 Resolution Introduced to Approve 3905

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provided for in the Regulation

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**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

CHAPTER 65

Statutory Authority: 1976 Code Section 1-13-70

65-23. Preservation of Records in Event of Charge of Discrimination.

**Synopsis:**

Regulation 65-23 requires that state agencies retain relevant personnel records during a timely investigation by the Human Affairs Commission under the Human Affairs Law, but that limitation does not reflect charges against other employers over whom the agency has jurisdiction to investigate, nor does the regulation contemplate the federal counterpart receiving files that are ultimately waived to the Agency.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Replace Regulation 65-23 as printed below.

**Text:**

65-23. Preservation of Records in Event of Charge of Discrimination.

When a charge of discrimination has been filed with the Commission or its federal equivalent, or if an action brought by either entity is pending, the employer, labor organization, or employment agency, shall preserve all personnel or employment records relevant to the charge or action until final disposition of the charge or the action. Failure to retain relevant personnel or employment records may result in an adverse inference against the party during the course of an investigation.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-23.

**Statement of Rationale:**

Regulation 65-23 should apply to all employers, labor organizations, and employment agencies which are in the process of being investigated by the Human Affairs Commission. The regulation should clarify that charges originating with the Commission’s federal counterpart, the Equal Employment Opportunity Commission, have the same requirement. The Human Affairs Commission should have the right to infer that, if an employer, labor organization, or employment agency fails to retain personnel records which are relevant evidence to an investigation, such evidence may have adversely affected the party’s position.