**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑7‑65 SO AS TO REQUIRE HEALTH CARE FACILITIES TO ESTABLISH PROTOCOLS ALLOWING A PATIENT TO DESIGNATE AN INDIVIDUAL AS AN AUTHORIZED VISITOR REGARDLESS OF THE BLOOD OR LEGAL RELATIONSHIP OF THE PATIENT TO THE INDIVIDUAL; TO AMEND SECTIONS 1‑13‑20, 1‑13‑30, 1‑13‑70, 1‑13‑80, 1‑13‑90, AS AMENDED, AND 1‑13‑100, ALL RELATING TO PROHIBITING DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, AGE, NATIONAL ORIGIN, OR DISABILITY, SO AS TO ALSO PROHIBIT SUCH DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO DEFINE “SEXUAL ORIENTATION” AND “GENDER IDENTITY”; TO AMEND SECTIONS 31‑21‑30, 31‑21‑40, 31‑21‑50, 31‑21‑60, AND 31‑21‑70, ALL RELATING TO PROHIBITING DISCRIMINATION PURSUANT TO THE SOUTH CAROLINA FAIR HOUSING LAW, CONCERNING THE BUYING, SELLING, OR RENTING OF DWELLINGS, BECAUSE OF RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN, SO AS TO ALSO PROHIBIT SUCH DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO DEFINE “SEXUAL ORIENTATION” AND “GENDER IDENTITY”; TO AMEND SECTIONS 45‑2‑20, 45‑2‑30, AND 45‑2‑60, RELATING TO PROHIBITING DISCRIMINATION PURSUANT TO THE LODGING ESTABLISHMENT ACT, CONCERNING HOTELS AND OTHER SLEEPING ACCOMMODATIONS, BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, GENDER, DISABILITY, OR MARITAL STATUS, SO AS TO ALSO PROHIBIT SUCH DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO DEFINE “SEXUAL ORIENTATION” AND “GENDER IDENTITY”; TO AMEND SECTION 45‑9‑10, RELATING TO PROHIBITING DISCRIMINATION IN THE FULL AND EQUAL ENJOYMENT OF THE GOODS, SERVICES, FACILITIES, PRIVILEGES, ADVANTAGES AND ACCOMMODATIONS OF ANY PLACE OF PUBLIC ACCOMMODATION BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN, SO AS TO PROHIBIT SUCH DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO DEFINE “SEXUAL ORIENTATION” AND “GENDER IDENTITY”; AND BY ADDING SECTION 16‑3‑1900 SO AS TO ESTABLISH PENALTIES FOR NONCAPITAL CRIMINAL OFFENSES AGAINST A PERSON THAT WERE MOTIVATED BY HATE, WHICH PERTAINS TO SUCH CRIMES BEING COMMITTED WITH THE INTENT TO COMMIT THE CRIME BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, AGE, DISABILITY, GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY OF A VICTIM, AND TO DEFINE “AGE”, “BASE OFFENSE”, “GENDER IDENTITY”, “DISABILITY”, “MOTIVATED BY HATE”, AND “SEXUAL ORIENTATION”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑65. A health care facility, as defined in Section 44‑7‑130, shall develop a protocol allowing a patient to designate any individual as an authorized visitor, regardless of the blood or legal relationship of the patient to the individual. This protocol also must allow for the acceptance of a notarized hospital visitation authorization designating an individual as an authorized visitor and for the acceptance of such an authorization from the individual designated as an authorized visitor when a patient is incapacitated or otherwise unable to designate an authorized visitor.”

SECTION 2. A. Section 1‑13‑20 of the 1976 Code is amended to read:

“Section 1‑13‑20. This chapter is an expression of the concern of the State for the promotion of harmony and the betterment of human affairs. The General Assembly declares the practice of discrimination against an individual because of race, religion, color, sex, sexual orientation, gender identity, age, national origin, or disability as a matter of state concern and declares that this discrimination is unlawful and in conflict with the ideals of South Carolina and the nation, as this discrimination interferes with opportunities of the individual to receive employment and to develop according to the individual’s own ability and is degrading to human dignity. The General Assembly further declares that to alleviate these problems a state agency is created which shall seek to eliminate and prevent discrimination because of race, religion, color, sex, sexual orientation, gender identity, age, national origin, or disability.”

B. Section 1‑13‑30 of the 1976 Code is amended by adding appropriately lettered items to read:

“( ) ‘Sexual orientation’ means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

( ) ‘Gender identity’ means a person’s self‑perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior, or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex, or sex at birth.”

C. Section 1‑13‑70(f) of the 1976 Code is amended to read:

“(f) To create or recognize advisory agencies and conciliation councils, local, regional, or statewide, as will aid in effectuating the purposes of this chapter and of Section 3 of Article I of the Constitution of this State. The commission may empower these agencies and councils to study problems of discrimination in all or specific fields of human affairs or in specific instances of discrimination because of race, religion, color, sex, sexual orientation, gender identity, age, national origin, or disability and to foster through community effort, or otherwise, goodwill, cooperation, and conciliation among the groups and elements of the population of the State. These agencies and councils also may make recommendations to the commission for the development of policies and procedures in general and in specific instances and for programs of formal or informal education which the commission may in turn recommend to the appropriate state agency. These advisory agencies and conciliation councils, as far as practicable, must be composed of representative citizens.”

D. Section 1‑13‑80(A), (B), (C), (E), (G), (I)(1), (3) and (6) of the 1976 Code are amended to read:

“(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate against an individual with respect to the individual’s compensation or terms, conditions, or privileges of employment because of the individual’s race, religion, color, sex, sexual orientation, gender identity, age, national origin, or disability;

(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual’s status as an employee, because of the individual’s race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability;

(3) to reduce the wage rate of an employee in order to comply with the provisions of this chapter relating to age.

(B) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of the individual’s race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability, or to classify or refer for employment an individual on the basis of the individual’s race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability.

(C) It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from its membership or otherwise to discriminate against an individual because of the individual’s race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability;

(2) to limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive an individual of employment opportunities or would limit employment opportunities or otherwise adversely affect the individual’s status as an employee or as an applicant for employment because of the individual’s race, color, religion, sex, sexual orientation, gender identity, age, national origin, or disability;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(E) It is an unlawful employment practice for an employer, labor organization, or joint labor‑management committee controlling apprenticeship or other training or retraining, including on‑the‑job training programs, to discriminate against an individual because of the individual’s race, color, religion, sex, sexual orientation, gender identity, national origin, or disability in admission to or employment in a program established to provide apprenticeship or other training.

(G) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor‑management committee controlling apprenticeship or other training or retraining, including on‑the‑job training programs, to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization or relating to a classification or referral for employment by the employment agency or relating to admission to or employment in a program established to provide apprenticeship or other training by the joint labor‑management committee indicating a preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, or disability, except that the notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, sexual orientation, gender identity, or national origin is a bona fide occupational qualification for employment.

(1) It is not an unlawful employment practice for an employer to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor‑management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program on the basis of the individual’s religion, sex, sexual orientation, gender identity, or national origin in those certain instances where religion, sex, sexual orientation, gender identity, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(3) It is not an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations if the differences are not the result of an intention to discriminate because of race, religion, color, sex, sexual orientation, gender identity, national origin, or disability; nor is it an unlawful employment practice for an employer to give and to act upon the results of a professionally developed ability test if the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. It is not an unlawful employment practice under this chapter for an employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(6) Nothing contained in this chapter may be interpreted to require an employer, employment agency, labor organization, or joint labor‑management committee subject to this chapter to grant preferential treatment to an individual or to a group because of race, color, religion, sex, sexual orientation, gender identity, national origin, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of a race, color, religion, sex, sexual orientation, gender identity, national origin, or disability employed by an employer, referred or classified for employment by an employment agency or labor organization admitted to membership or classified by a labor organization, or admitted to, or employed in, an apprenticeship or other training program in comparison with the total number or percentage of persons of the race, color, religion, sex, sexual orientation, gender identity, national origin, or disability in a community, state, section, or other area or in the available work force in a community, state, section, or other area.”

E. Section 1‑13‑90(d)(9) and (e) of the 1976 Code is amended to read:

“(9) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement of hiring of employees, with or without back pay payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Unemployment compensation, interim earnings, or amount earnable with reasonable diligence, by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, of the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay if such individual was refused admission, suspended or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, sexual orientation, gender identity, age or national origin in violation of this chapter, or discrimination in violation of subsection (e) of Section 1‑13‑80.

(e) For complaints of the existence or occurrence of a practice asserted to be discriminatory on the basis of race, religion, color, age, sex, sexual orientation, gender identity, national origin, or disability, other than those discriminatory practices declared unlawful by Section 1‑13‑80, or of any other dispute regarding human affairs, the procedure of the commission is as follows:

The commissioner shall assign one or more of the commission’s employees or agents who may resolve the complaint by conference, conciliation, and persuasion with the complainant and the respondent, the resolution to be embodied in a conciliation agreement which shall include such provisions as are agreed upon by the complainant and the respondent. If the employee or agent is unable after reasonable efforts to resolve the complaint, the employee or agent shall withdraw from the matter and not participate further and the commission file of the complaint must be closed. If the complainant and the respondent thereafter resolve the complaint and submit a record of the resolution to the commission, the record must be entered into the commission file of the complaint.”

F. Section 1‑13‑100 of the 1976 Code is amended to read:

“Section 1‑13‑100. Nothing in this chapter may be construed to create a cause of action other than those specifically described in Section 1‑13‑90 of this chapter. Nothing in this chapter may be construed to create a cause of action against a person not covered by Title VII of the Civil Rights Act of 1964, as amended, 42 U. S. C. Section 2000e et seq., if the cause of action arises from discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Nothing in this chapter may be construed to create a cause of action against a person not covered by the Age Discrimination in Employment Act of 1967, as amended, 29 U. S. C. Section 621 et seq., if the cause of action arises from discrimination on the basis of age. Nothing in this chapter may be construed to create a cause of action against a person not covered by the Americans with Disabilities Act of 1990, as amended, Public Law 101‑336.”

SECTION 3. A. Section 31‑21‑30 of the 1976 Code is amended by adding appropriately numbered items to read:

“( ) ‘Sexual orientation’ means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

( ) ‘Gender identity’ means a person’s self‑perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior, or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex, or sex at birth.”

B. Section 31‑21‑40 of the 1976 Code is amended to read:

“Section 31‑21‑40. It is unlawful:

(1) to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, sexual orientation, gender identity, familial status, or national origin;

(2) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, sexual orientation, gender identity, familial status, or national origin;

(3) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination;

(4) to represent to any person because of race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when the dwelling is available;

(5) for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin;

(6) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) that buyer or renter;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that buyer or renter;

(7) to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of:

(a) that person;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that person.”

C. Section 31‑21‑50 of the 1976 Code is amended to read:

“Section 31‑21‑50. It is unlawful to deny any person access to, or membership or participation in, any multiple‑listing service, real estate brokers’ organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of the access, membership, or participation on account of race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.”

D. Section 31‑21‑60 of the 1976 Code is amended to read:

“Section 31‑21‑60. (A) It is unlawful for any person or other entity whose business includes engaging in residential real estate‑related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

(B) As used in this section, ‘residential real estate‑related transaction’ means any of the following:

(1) the making or purchasing of loans or providing other financial assistance:

(a) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(b) secured by residential real estate;

(2) the selling, brokering, or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, sexual orientation, gender identity, handicap, or familial status.”

E. Section 31‑21‑70(D) of the 1976 Code is amended to read:

“(D) Nothing in this chapter prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to those persons, unless membership in the religion is restricted because of race, color, sexual orientation, gender identity, or national origin. Nothing in this chapter prohibits a private club not in fact open to the public, which as an incident to its primary purpose provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.”

SECTION 4. A. Section 45‑2‑20 of the 1976 Code as added by Act 446 of 1994, is amended by adding appropriately numbered items to read:

“( ) ‘Sexual orientation’ means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

( ) ‘Gender identity’ means a person’s self‑perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior, or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex, or sex at birth.”

B. Section 45‑2‑30(B) of the 1976 Code, as added by Act 446 of 1994, is amended to read:

“(B) The innkeeper refusing or denying accommodations, facilities, or privileges of a lodging establishment for any of the reasons specified in items (1) through (5) of this section may not be determined liable in any civil or criminal action or for any fine or penalty based upon the refusal or denial, except that the accommodation, facilities, or privilege of a lodging establishment may not be refused or denied based upon a person’s race, creed, color, national origin, gender, sexual orientation, gender identity, disability, or marital status.”

C. Section 45‑2‑60(6) of the 1976 Code, as added by Act 446 of 1994 is amended to read:

“(6) violation of a rule of the lodging establishment which is posted in a conspicuous place and manner in the lodging establishment in accordance with Section 45‑2‑70, but no rule may authorize the innkeeper to eject or to refuse or deny service or accommodations to a person because of race, creed, color, national origin, gender, sexual orientation, gender identity, disability, or marital status.”

D. Section 45‑9‑10(A) of the 1976 Code, as added by Act 423 of 1990 is amended to read:

“(A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 of this chapter, without discrimination or segregation on the ground of race, color, religion, ~~or~~ national origin, sexual orientation, or gender identity.”

SECTION 5. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 18

Hate Crimes

Section 16‑3‑1900. (A) A person who is convicted of an noncapital offense contained in this chapter, who was motivated by hate in the commission of the offense, is guilty of a felony offense separate from the base offense and, upon conviction, must be punished in accordance with the following:

(1) if the base offense is a misdemeanor, the person must be fined not less than two thousand dollars or more than ten thousand dollars or imprisoned not less than ninety days and not more than six months, or both;

(2) if the base offense is a felony for which the penalty could be imprisonment for not more than ten years, the person must be imprisoned not less than six months and not more than one year;

(3) if the base offense is a felony for which the penalty could be imprisonment for not more than thirty years, excluding those offenses for which imprisonment could be for not more than ten years, the person must be imprisoned not less than one year and not more than two years;

(4) for conviction of a second offense of the crime established pursuant to this section, regardless of whether the base offense in the first or second conviction was a misdemeanor or a felony, the person must be imprisoned not less than two years and not more than five years.

(B) As used in this section:

(1) ‘Age’ means sixty years of age or older.

(2) ‘Base offense’ means the offense contained in this chapter for which the person was convicted and the commission of which was motivated by hate.

(3) ‘Disability’ means that the person has a physical or mental impairment that substantially limits one or more of the major life activities of the person including, but not limited to, caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) ‘Gender identity’ means a person’s self‑perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior, or physical characteristics that are in accord or opposed to the person’s physical anatomy, chromosomal sex, or sex at birth.

(5) ‘Motivated by hate’ means the commission of a crime contained in this chapter with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation, or gender identity of the victim, whether or not the offender’s belief or perception was correct.

(6) ‘Sexual orientation’ means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.”

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 8. This act takes effect upon approval by the Governor.

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