COMMITTEE REPORT

March 7, 2018

**H. 3448**

Introduced by Reps. Funderburk, Lucas, W. Newton, Bernstein, Norrell, Pope, Wheeler and Clary

S. Printed 3/7/18--H.

Read the first time January 12, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3448) to amend the Code of Laws of South Carolina, 1976, by adding Section 8‑27‑05 so as to entitle Chapter 27 the “South Carolina Whistleblower and Public, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8‑27‑05 SO AS TO ENTITLE CHAPTER 27 THE “SOUTH CAROLINA WHISTLEBLOWER AND PUBLIC EMPLOYEE PROTECTION ACT”; TO AMEND SECTION 8‑27‑10, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE CHAPTER, SO AS TO REVISE THE DEFINITION OF “APPROPRIATE AUTHORITY” TO INCLUDE THE STATE INSPECTOR GENERAL; TO AMEND SECTION 8‑27‑20, AS AMENDED, RELATING TO REWARDS FOR REPORTS RESULTING IN SAVINGS, SO AS TO ELIMINATE THE TWO THOUSAND DOLLAR CAP ON REWARDS AND PROVIDE A PROCEDURE FOR REWARDING MULTIPLE EMPLOYEES WHO REPORT THE SAME ABUSE; AND TO AMEND SECTION 8‑27‑30, AS AMENDED, RELATING TO CIVIL ACTIONS AGAINST AN EMPLOYING PUBLIC BODY FOR RETALIATION AGAINST AN EMPLOYEE WHO REPORTS A VIOLATION OF STATE OR FEDERAL LAW OR REGULATION, SO AS TO REMOVE THE ONE‑YEAR LIMITATION ON THE PERIOD DURING WHICH THE EMPLOYEE IS PROTECTED FROM ADVERSE EMPLOYMENT ACTIONS, AND TO PROVIDE FOR ADDITIONAL REMEDIES.

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

SECTION 1. Chapter 27, Title 8 of the 1976 Code is amended by adding:

“Section 8‑27‑05. This chapter may be cited as the ‘South Carolina Whistleblower and Public Employee Protection Act’.”

SECTION 2. Section 8‑27‑10(3) of the 1976 Code, as added by Act 164 of 1993, is amended to read:

“(3) ‘Appropriate authority’ means, respectively, the public body that employs the person making the report; or a federal, state, or local governmental body, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or wrongdoing. If a report is made to an entity other than the public body employing the person making the report, the employing public body must be notified as soon as practicable by the entity that received the report. The term includes, but it is not limited to, the State Inspector General, the South Carolina Law Enforcement Division, the Solicitor’s Office, the State Ethics Commission, the State Auditor, the Legislative Audit Council, and the Office of Attorney General.”

SECTION 3. Section 8‑27‑20 of the 1976 Code, as last amended by Act 164 of 1993, is further amended to read:

“Section 8‑27‑20. (A) ~~No~~ A public body may not dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because the employee files a written report with an appropriate authority of wrongdoing. If the appropriate authority determines the employee’s report is unfounded, or amounts to a mere technical violation, and is not made in good faith, the public body may take disciplinary action including termination. Any public body covered by this chapter may impose disciplinary sanctions, in accordance with its internal disciplinary procedures, against any of its direct line supervisory employees who retaliate against another employee for having filed a good faith report under this chapter.

(B) If the employee’s report results in a saving of any public money from the abuses described in this chapter, twenty‑five percent of the estimated net savings resulting from the first year of implementation of the employee’s report~~, but not more than two thousand dollars,~~ must be rewarded to the employee by the public body as determined by the Director of the Department of Administration. This chapter does not supersede the State Employee Suggestion Program. For employees of state agencies participating in the program, items that they identify involving wrongdoing must be referred as a suggestion to the program by the employee. An employee is entitled to only one reward either under this section or under the program, at the employee’s option. In the event multiple employees report the same abuse, the employees may not receive more in total than the twenty‑five percent estimated net savings resulting from the first year of implementation of the employees’ report. The Director of the Department of Administration will determine the appropriate awards.”

SECTION 4. Section 8‑27‑30 of the 1976 Code, as last amended by Act 164 of 1993, is further amended to read:

“Section 8‑27‑30. (A) If an employee is dismissed, suspended from employment, demoted, or receives a decrease in compensation, ~~within one year~~ after having timely reported an alleged wrongdoing under this chapter, the employee may institute a ~~nonjury~~ civil action against the employing public body for:

(1) reinstatement to his former or an equivalent position;

(2) compensation for lost wages and health care or retirement benefits;

(3) actual damages ~~not to exceed fifteen thousand dollars~~ that result directly from the temporary or permanent loss of health care or retirement benefits; and

(4) reasonable attorney fees as determined by the court, ~~but this award of attorney fees may not exceed ten thousand dollars for any trial and five thousand dollars for any appeal~~ not to exceed one third of the total recovery by the employee.

The action must be brought in the court of common pleas of the county in which the employment action occurred. ~~No~~ An action may not be brought under this chapter unless:

(1) the employee has exhausted all available grievance or other administrative remedies; and

(2) any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing.

(B) An action under this chapter ~~must be commenced within one year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies or~~ is forever barred unless it is commenced within one year after the later of the following, the:

(1) dismissal, suspension, demotion, or decrease in compensation;

(2) exhaustion of all available grievance or other administrative and judicial remedies; or

(3) termination of the employment relationship between the employee and the public body against whom the employee’s report was made.”

SECTION 5. The repeal or amendment by this act of a law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded on the law, or alter, discharge, release or extinguish a penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly provides. 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 a 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 6. This act takes effect upon approval by the Governor.

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