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CHAPTER 13.

 STATE HUMAN AFFAIRS COMMISSION

**SECTION 1‑13‑10.** Short title.

 This chapter shall be known as the "South Carolina Human Affairs Law."

HISTORY: 1962 Code Section 1‑360.21; 1972 (57) 2651.

 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, 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, age, national origin, or disability.

HISTORY: 1962 Code Section 1‑360.22; 1972 (57) 2651; 1979 Act No. 24, Section 1; 1996 Act No. 426, Section 2.

**SECTION 1‑13‑30.** Definitions.

 The following words and phrases used herein shall be construed as follows:

 (a) "Commission" means the State Human Affairs Commission.

 (b) "National origin" includes ancestry.

 (c) "Age" means at least forty years.

 (d) "Person" means individuals, labor unions and organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint‑stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, other legal or commercial entities located in part or in whole in the State or doing business in the State, the State and any of its agencies and departments or local subdivisions of state agencies and departments; and municipalities, counties, special purpose districts, school districts and other local governments.

 (e) "Employer" means any person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include an Indian tribe or a bona fide private membership club other than a labor organization.

 (f) "Employment agency" means any person regularly undertaking to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

 (g) "Labor organization" means any agent of a labor organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.

 (h) "Employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in this State, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy‑making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of the State or any of its agencies, departments, local subdivisions, or political subdivisions of the State, local government, or local governmental agencies.

 (i) "Complainant" means an individual alleging to have been aggrieved by an employment practice which is unlawful under this chapter.

 (j) "Respondent" means a person against whom a charge of violation has been filed.

 (k) The term "religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

 (l) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment‑related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in item (3) of subsection (h) of Section 1‑13‑80 shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion. Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. This subsection shall not apply to any fringe benefit fund or insurance program which was in effect on October 31, 1978, until April 30, 1979. Until after October 31, 1979 or, if there was an applicable collective bargaining agreement in effect on October 31, 1978, until the termination of that agreement, no person who, on October 31, 1978, was providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation of the provisions of this chapter relating to sex discrimination in employment shall, in order to come into compliance with such provisions, reduce the benefits or the compensation provided any employee on October 31, 1978, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: Provided, That where the costs of such benefits on October 31, 1978 are apportioned between employers and employees, the payments or contributions required to comply with the provisions of this chapter relating to sex discrimination in employment may be made by employers and employees in the same proportion: And provided, further, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with the provisions of this chapter relating to sex discrimination in employment.

 (M) "Covered entity" means an employer, employment agency, labor organization, or joint labor‑management committee.

 (N) "Disability" means with respect to an individual:

 (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;

 (2) a record of an impairment; or

 (3) being regarded as having an impairment.

 The definition of "disability" must be interpreted in a manner consistent with federal regulations promulgated pursuant to the Americans with Disabilities Act of 1990, as amended, Public Law 101‑336.

 (O) "Auxiliary aids and services" means:

 (1) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

 (2) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

 (3) acquisition or modification of equipment or devices; and

 (4) other similar services and actions.

 (P) "Direct threat" means a significant risk to the health or safety of the employee or of others that cannot be eliminated by reasonable accommodation.

 (Q) "Illegal use of drugs" means the use of drugs, the possession and distribution of which is unlawful under Chapter 53, Title 44. This term does not include the use of a drug taken under supervision by a licensed health care professional or other lawful uses. Nothing in this chapter prohibits a covered entity from requiring employees to conform to drug‑free workplace laws and regulations or from establishing and enforcing rules, policies, or guidelines concerning use of alcohol or illegal drugs in the workplace.

 (R) "Drug" means a controlled substance as defined in Section 44‑53‑10.

 (S) "Qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this chapter, consideration must be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written job description before advertising or interviewing applicants for the job, this description must be considered evidence of the essential functions of the job. "Qualified individual with a disability" does not include an employee or applicant who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of the use.

 (T) "Reasonable accommodation" may include:

 (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

 (2) job restructuring, part‑time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

 (U) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

 (1) the nature and cost of the accommodation needed under this chapter;

 (2) the overall financial resources of the facility involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the accommodation upon the operation of the facility;

 (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

 (4) the type of operation of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness and the administrative or fiscal relationship of the facility in question to the covered entity.

HISTORY: 1962 Code Section 1‑360.23; 1972 (57) 2651; 1973 (58) 698; 1979 Act No. 24, Section 2; 1988 Act No. 663, Section 1; 1996 Act No. 426, Section 3.

**SECTION 1‑13‑40.** Creation of South Carolina Commission on Human Affairs.

 (a) There is hereby created in the executive department the South Carolina Human Affairs Commission, to encourage fair treatment for, and to eliminate and prevent discrimination against, any member of a group protected by this chapter, and to foster mutual understanding and respect among all people in this State.

 (b) The commission shall consist of a member from each congressional district appointed by the Governor, with the advice and consent of the Senate, and two members at large appointed by the Governor. Each member shall serve for a term of three years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired term.

 (c) No member of the Commission shall serve more than two consecutive terms. A member having served two consecutive terms shall be eligible for reappointment one year after the expiration of his second term.

 (d) The Governor shall appoint one of the at large members to serve as chairman and may appoint any member to serve as vice‑chairman, each to serve a term of one year. In the absence of appointment of a vice‑chairman, the members may elect one of their number to fill that office. The Commission may elect other officers from among its members as necessary, except that the Commissioner may be elected to serve as secretary.

 (e) The Commission shall meet at such times and in such places as it may determine.

 (f) A quorum for transacting business shall consist of a majority of the membership as constituted at the time of a meeting.

 (g) Each member shall be entitled to one vote on each issue presented, a majority of the votes cast determining the issue. Votes may be cast only in person. Voting may be by secret ballot or by voice vote.

 (h) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission.

 (i) Members of the Commission shall be entitled to such per diem, mileage and subsistence as is provided for by law for boards, committees and commissions.

 (j) The Commission shall render each year to the Governor and to the General Assembly a written report of its activities and of its recommendations.

HISTORY: 1962 Code Section 1‑360.24; 1972 (57) 2651; 1979 Act No. 24, Section 3; 1983 Act No. 80, Sections 1‑3; 1991 Act No. 248, Section 6; 2012 Act No. 279, Section 1, eff June 26, 2012.

**SECTION 1‑13‑50.** Commissioner and personnel.

 (a) The Commission shall recommend to the Governor a person who shall be employed as Commissioner and shall, with the approval of the Governor, employ such person who shall be subject to dismissal by the Commission with the approval of the Governor. The Commissioner shall be the chief administrative officer of the Commission, and shall perform such duties as are incident to such office or are required of him by the Commission.

 (b) The Commissioner shall receive such compensation as may be provided by law.

 (c) The Commissioner shall recommend to the Commission, and with its approval, employ attorneys, secretaries, clerks, investigators and conciliators for the expeditious discharge of the Commission's duties.

HISTORY: 1962 Code Section 1‑360.25; 1972 (57) 2651; 1973 (58) 698.

**SECTION 1‑13‑60.** Duties of chairman and vice‑chairman.

 The chairman shall be the presiding officer at meetings of the Commission and shall promote the orderly transaction of its business. In the chairman's absence, or his inability to act, the vice‑chairman or if no vice‑chairman has been appointed or elected a commissioner designated by the chairman shall act in his stead.

HISTORY: 1962 Code Section 1‑360.26; 1972 (57) 2651.

**SECTION 1‑13‑70.** Powers of Commission.

 The Commission shall have the power:

 (a) To establish and maintain its principal office in the city of Columbia and such other offices within the State as it may deem necessary.

 (b) To adopt bylaws.

 (c) To promulgate, in accordance with the provisions of this chapter, regulations including, but not limited to, regulations requiring the posting of notices prepared or approved by the Commission and the submission of equal employment opportunity plans and reports by any state agency or department or local subdivisions of a state agency or department, according to a format and schedule approved by the Commission.

 (d) To formulate policies to effectuate the purposes of this chapter and to make recommendations to appropriate parties in furtherance of such policies.

 (e) To obtain and utilize upon request the services of all governmental departments and agencies.

 (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, 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.

 (g) To seek the understanding and cooperation of or to enter into agreement with any existing or later‑created councils, agencies, commissions, task forces, institutions or organizations, public or private, which are, in the judgment of the Commission, dedicated to the promotion of human rights and affairs.

 (h) To issue publications and results of investigations and research as in its judgment will tend to promote goodwill and the betterment of human affairs.

 (i) To require from any state agency or department or local subdivisions of a state agency or department such reports and information at such times as it may deem reasonably necessary to effectuate the purposes of this chapter.

 (j) To prepare and distribute copies of this chapter, of any regulations promulgated pursuant to subsection (c) of this section, of policies formulated pursuant to subsection (d) of this section or of any other materials effectuating the purposes of this chapter; to make the chapter available to the public and to require the chapter to be posted in places conspicuous to employees of state agencies or departments or local subdivisions of a state agency or department and to applicants for employment therewith.

 (k) To cooperate with the United States Equal Employment Opportunity Commission created by the Civil Rights Act of 1964 (78 Stat. 241) in order to achieve the purposes of that act and with other Federal, State and local agencies and departments.

 (l) To accept reimbursement pursuant to section 709(b) of the Civil Rights Act of 1964 (78 Stat. 241) for services rendered to the United States Equal Employment Opportunity Commission.

 (m) To accept gifts or bequests, grants or other donations, public or private.

 (n) To investigate problems in human affairs in the State and in connection therewith, to hold hearings, to request the attendance of persons who shall give testimony, to receive for the record of any such hearing written statements, documents, exhibits and other items pertinent to the subject matter of any such hearing, and following any such investigation or hearing to issue such report and recommendations as in its opinion will assist in effectuating the purposes of this chapter.

 (o) To receive and resolve complaints in accordance with the provisions of Section 1‑13‑90.

 (p) Pursuant to subsections (e) and (i), if a person fails to permit access, or otherwise refuses to cooperate, the Commission may request an order of a court of competent jurisdiction requiring access and other related good faith compliance.

 (q) To furnish technical assistance requested by persons subject to this chapter to assist them in their compliance with this chapter, the regulations promulgated hereunder, a conciliation agreement or an order issued thereunder.

 (r) To petition for an order of a court of competent jurisdiction requiring compliance with an order issued by the Commission pursuant to the procedure set forth in item (16) of subsection (c) of Section 1‑13‑90; provided, that a complainant, respondent or intervenor aggrieved by an order of the Commission is entitled to judicial review. The procedure for compliance, enforcement or review shall be as set forth in item (19) of subsection (c) of Section 1‑13‑90.

 (s) To institute proceedings in a court of competent jurisdiction, for cause shown, to prevent or restrain any person from violating any provision of this chapter.

 (t) To contract with persons and organizations to perform services as it may deem reasonably necessary to effectuate the purposes of this chapter and to accept reimbursement for services rendered pursuant to the contract.

 (u) To make contractual agreements, within the scope and authority of this chapter, with any agency of the federal government, which agreements may include provisions under which the Federal Equal Employment Opportunity Commission shall refrain from processing a charge in South Carolina in any class specified in such agreements.

 (v) To perform the functions specified in this chapter.

HISTORY: 1962 Code Section 1‑360.27; 1972 (57) 2651; 1973 (58) 698; 1979 Act No. 24 Sections 4‑7; 1996 Act No. 426, Section 4.

**SECTION 1‑13‑80.** Unlawful employment practices; exceptions.

 (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, 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, 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, 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, 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, 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, age, national origin, or disability;

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

 (D) It is an unlawful employment practice for a covered entity:

 (1) to exclude or otherwise deny equal jobs or benefits to a qualified individual because of a known disability of an individual with whom the qualified individual is known to have a relationship or association;

 (2) to fail or make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operations of the business of the covered entity; or to deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

 (3) to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity;

 (4) to fail to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant, except where the skills are the factors that the test purports to measure.

 (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, national origin, or disability in admission to or employment in a program established to provide apprenticeship or other training.

 (F) It is an unlawful employment practice for an employer to discriminate against an employee or applicant for employment, for an employment agency, or joint labor‑management committee controlling apprenticeship or other training or retraining, including on‑the‑job training programs, to discriminate against an individual or for a labor organization to discriminate against a member or applicant for membership because the individual has opposed a practice made an unlawful employment practice by this chapter or because the individual has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter.

 (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, 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, or national origin is a bona fide occupational qualification for employment.

 (H) It is unlawful for an employer, labor organization, or employment agency 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 indicating a preference, limitation, specification, or discrimination based on age.

 (I) Notwithstanding any other provision of this chapter:

 (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, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

 (2) It is not an unlawful employment practice for a party subject to the provisions of this section to compile or assemble information as may be required pursuant to Section 1‑13‑70(i) or Federal Equal Employment Opportunity Commission or federal contract compliance requirements or pursuant to another law not inconsistent with this chapter.

 (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, 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, 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)).

 (4) Nothing contained in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which a preferential treatment is given to an individual because the individual is an Indian living on or near a reservation.

 (5) This chapter does not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society of its activities. It is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

 (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, 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, 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, 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.

 (7) It is not unlawful for an employer, employment agency, or labor organization:

 (i) to take an action otherwise prohibited under this chapter where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

 (ii) to observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter except that no employee benefit plan may excuse the failure to hire an individual.

 Notwithstanding the provisions of subitem (ii), no seniority system or employee benefit plan may require or permit the involuntary retirement of an individual covered by the provisions of this chapter relating to age because of the age of the individual; however, employees covered by a collective bargaining agreement which was in effect on June 30, 1986, and which would otherwise be prohibited by the provisions of this subitem, this subitem takes effect upon the termination of the agreement or on January 1, 1990, whichever occurs first.

 (8) Nothing in this chapter may be construed to prohibit compulsory retirement of an employee who has attained sixty‑five years of age and who, for the two‑year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan or a combination of these plans of the employer of the employee which equals in aggregate at least forty‑four thousand dollars.

 (9) In applying subsection (I)(8), the retirement benefit test, if a retirement benefit is in a form other than a straight life annuity with no ancillary benefits or if employees contribute to a plan or make rollover contributions, the benefit must be adjusted in accordance with regulations prescribed by the commissioner so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

 (10) Nothing in this chapter relating to age discrimination in employment may be construed to prohibit compulsory retirement of an employee who has attained seventy years of age and who is serving under a contract of unlimited tenure or similar arrangement providing for unlimited tenure at an institution of higher education. This item is effective until December 31, 1993.

 (11) It is an unlawful employment practice for a person to forcibly resist, prevent, impede, or interfere with the commission or any of its members or representatives in the lawful performance of duty under this chapter.

 (12) It is not unlawful for an employer which is the State, a political subdivision of the State, an agency or instrumentality of the State or of a political subdivision of the State, or an interstate agency to fail or refuse to hire or to discharge an individual because of the individual's age if the action is taken:

 (i) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable law on March 3, 1983;

 (ii) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

 This item is effective until December 31, 1993.

 The term "firefighter" means an employee the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

 The term "law enforcement officer" means an employee the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this item, "detention" includes the duties of employees assigned to guard individuals incarcerated in a penal institution.

 Nothing contained in items (8), (10), and (12) may override Sections 9‑1‑1530 and 9‑1‑1537.

HISTORY: 1962 Code Section 1‑360.28; 1972 (57) 2651; 1979 Act No. 24, Section 8; 1988 Act No. 663, Section 2; 1996 Act No. 426, Section 5.

**SECTION 1‑13‑85.** Medical examinations and inquiries.

 (A) The prohibition against unlawful employment practices set forth in Section 1‑13‑80 (a) through (d) includes the prohibition against conducting medical examinations and inquiries except as provided for in this section.

 (B) Except as provided in subsection (C), a covered entity must not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability. A covered entity may make preemployment inquiries into the ability of an applicant to perform job‑related functions.

 (C) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and may condition an offer of employment on the results of the examination, if:

 (1) all entering employees are subjected to the examination regardless of disability;

 (2) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

 (a) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

 (b) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;

 (c) government officials investigating compliance with this chapter must be provided relevant information on request; and

 (3) the results of the examination are used only in accordance with this chapter.

 (D) For purposes of this chapter, drug and alcohol exams, tests, or screens may not be considered a medical examination.

 (E)(1) A covered entity may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job‑related and consistent with business necessity.

 (2) A covered entity may conduct voluntary medical examinations including voluntary medical histories which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job‑related functions.

 (3) Information obtained under subsection (E)(2) regarding the medical condition or history of an employee is subject to the requirements of subsection (C)(2) and (3).

 (F)(1) It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job related and consistent with business necessity, and the performance cannot be accomplished by reasonable accommodation, as required under this title.

 (2) The term "qualification standards" may include a requirement that an individual may not pose a direct threat to the safety of that individual or of other individuals in the workplace.

 (3) This chapter may not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on of its activities by the corporation, association, educational institution, or society. Under this chapter, a religious organization may require that all applicants and employees conform to the religious tenets of the organization.

 (4) If an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services pursuant to the requirements of the Americans with Disabilities Act of 1990, Public Law 101‑336, and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual to a job involving food handling.

 Nothing in this chapter may be construed to preempt, modify, or amend a state, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others and which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

HISTORY: 1996 Act No. 426, Section 1.

**SECTION 1‑13‑90.** Complaints, investigations, hearings and orders.

 (a) Any person shall complain in writing under oath or affirmation to the Commission within one hundred eighty days after the alleged discriminatory practice occurred. The Commissioner, his employees or agents, shall assist complainants in reducing verbal complaints to writing and shall assist in setting forth such information as may be required by the Commission. The Commission shall serve a copy of the complaint upon the respondent within ten days after the complaint is received by the Commission, except that if the Commission determines for good cause that such service will impede its investigation of the complaint, it shall serve notice of the complaint, including the date, place, and circumstances of the alleged unlawful employment practice upon the respondent within ten days after the complaint is received by the Commission.

 (b) Any complainant who is a member of the Commission shall be disqualified from participation except as the complainant in the processing and resolution of the complaint.

 (c) For complaints asserting expressly or in substance a violation by a state agency or department or local subdivisions of a state agency or department of Section 1‑13‑80 the procedure shall be as follows:

 (1) The Commissioner shall assign one or more of his employees or agents to investigate the complaint, in which case one shall be designated the investigator in charge of the complaint. Information gathered during an investigation under this subsection shall not be made public by the Commission, its officers or employees, except for information made public as a result of being offered or received into evidence in an action brought under this subsection.

 (2) The Chairman of the Commission or, upon the request of the Chairman, the Commissioner shall designate a member of the Commission to supervise the processing of the complaint.

 (3) The complaint may be resolved at any time before a hearing by conference, conciliation and persuasion with the complainant and the respondent, such resolution to be embodied in a conciliation agreement, which shall include an agreement by the respondent to refrain from committing unlawful discriminatory practices in the future, and which may contain such further provisions as are agreed upon by the complainant and the respondent. No conciliation agreement shall be deemed an effective resolution by the Commission unless the supervisory commission member shall have reviewed and approved the terms thereof. Positions taken by a witness in connection with such efforts toward conciliation shall not be made public or used against the interest of the witness in a subsequent proceeding.

 (4) In undertaking its investigation of a complaint the Commission shall have the authority:

 (i) To issue a subpoena or subpoena duces tecum and thereby compel attendance of witnesses or production for examination of books, papers, and records, whenever it is deemed necessary to compel the attendance of witnesses, or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers or any other evidence relating to any matter under investigation or in question before the Commission. The power may be exercised only by the joint action by the Chairman of the Commission and the Commissioner.

 (ii) To require any party or witness to answer interrogatories at any time after the complaint is filed.

 (iii) To take depositions of witnesses including any party pursuant to a complaint or investigation made by the Commission.

 (iv) Pursuant to subitems (i), (ii), (iii), above, if a person fails to permit access, fails to comply with a subpoena, refuses to have his or her deposition taken, refuses to answer interrogatories, or otherwise refuses to allow discovery, the Commission may request an order of a court of competent jurisdiction requiring discovery and other related good faith compliance.

 (5) If not sooner resolved, the investigator shall upon completion of his investigation submit to the supervisory commission member a statement of the facts disclosed by his investigation and recommend either that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. The supervisory commission member, after review of the case file and the statement and recommendation of the investigator shall issue an order either of dismissal or for a hearing, which order shall not be subject to judicial or other further review.

 (6) If the order be of dismissal, the supervisory commission member shall mail a copy of the order to the complainant and the respondent at their last known addresses.

 (7) If the order be for a hearing, the supervisory commission member shall annex thereto a notice and a copy of the complaint and require the respondent to answer the complaint at a hearing at a time and place specified in the notice and shall serve upon the respondent a copy of the order, the complaint, and the notice.

 (8) At any time before a hearing a complaint may be amended by the supervisory commission member upon the request of the investigator or of the complainant or of the respondent. Complaints may be amended during a hearing only upon a majority vote of the panel of commission members for such hearing.

 (9) Upon request by any party, the Commissioner shall issue appropriate subpoenaes or subpoenaes duces tecum to any witnesses or other custodians of documents desired to be present at the hearing, or at prehearing depositions, unless the Commissioner determines that issuance of the subpoenaes or subpoenaes duces tecum would be unreasonable or unduly burdensome.

 (10) Upon notification by any party that any party or witness has failed to permit access, failed to comply with a subpoena or subpoena duces tecum, refused to have his or her deposition taken, refused to answer interrogatories, or otherwise refused to allow discovery, the Commission, shall, upon notice to the party or witness, apply to a court of competent jurisdiction for an order requiring discovery and other good faith compliance unless the Commission determines that the discovery would be unreasonably or unduly burdensome.

 (11) Upon request by the supervisory commission member, the Chairman of the Commission shall designate a panel of three members of the Commission to sit as the Commission to hear the complaint; provided, that no member of the Commission shall be a member of a panel to hear a complaint for which he has been a supervisory commission member.

 (12) At any hearing held pursuant to this subsection, the case in support of the complaint shall be presented before the panel by one or more of the commission's employees or agents, and, with consent of the panel, by legal representatives of the complaining party; provided, that endeavors at conciliation by the investigator shall not be received into evidence nor otherwise made known to the members of the panel.

 (13) The respondent shall submit a written answer to the complaint and appear at such hearing in person or by counsel and may submit evidence. The respondent shall have the power reasonably and fairly to amend his answer.

 (14) The complainant shall be permitted to be present and submit evidence.

 (15) Proceedings under this section shall be subject to the Administrative Procedures Act, Sections 1‑23‑310 through 1‑23‑400 of the Code of Laws of South Carolina, 1976, as amended, and in case of conflict between the provisions of this chapter and the Administrative Procedures Act, the Administrative Procedures Act shall govern. A recording of the proceedings shall be made, which may be subsequently transcribed upon request and payment of a reasonable fee by the complainant or the respondent. The fee shall be set by the Commission or upon motion of the panel, in which case copies of such transcription shall be made available to the complainant or the respondent upon request and payment of a reasonable fee to be set by the Commission.

 (16) If upon all the evidence at the hearing the panel shall find that the respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and serve upon the respondent in the name of the Commission an opinion and order requiring that such unlawful discriminatory practice be discontinued and requiring such other action including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay to the persons aggrieved by such practice as, in the judgment of the panel, will effectuate the purposes of this chapter. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. The Commission may retain jurisdiction of any such case until it is satisfied of compliance by the respondent with its order.

 (17) If upon all the evidence at the hearing the panel shall find that the respondent has not engaged in any such unlawful discriminatory practice, the panel shall state its findings of fact and serve upon the complainant and the respondent an opinion and order dismissing the complaint as to the respondent.

 (18) A copy of the opinion and order of the Commission shall be delivered in all cases to the Attorney General and to such other public officers as the Commission deems proper. Copies of the opinion and order shall be available to the public for inspection upon request, and copies shall be made available to any person upon payment of a reasonable fee set by the Commission.

 (19)(i) If an application for review is made to the commission within fourteen days from the date the order of the commission is given, the commission, for good cause shown, shall review the order and evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the order.

 (ii) The order of the commission, as provided in item (16) of subsection (c) of this section, if not reviewed in due time, or an order of the commission upon review, as provided for in subitem (i) of item (19) of this subsection, is conclusive and binding as to all questions of fact unless clearly erroneous in view of the reliable, probative, and substantive evidence in the whole record. Either party to the dispute, within thirty days after receipt of notice to be sent by registered mail of the order may appeal the decision of the commission to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D). In case of an appeal from the decision of the commission, the appeal operates as a supersedeas for thirty days only, unless otherwise ordered by the administrative law judge, and the respondent is required to comply with the order involved in the appeal or certification until the questions at issue are fully determined in accordance with the provisions of this chapter.

 (iii) The commission may institute a proceeding for enforcement of its order of item (16) of subsection (c) of this section, or its amended order of subitem (i) of item (19) of this subsection after thirty days from the date of the order, by filing a notice of appeal in the court of common pleas of the county in which the hearing occurred, or where a person required in the order to cease and desist from a practice which is the subject of the commission's order, or to take other affirmative action, resides, or transacts business.

 If no appeal pursuant to subitem (ii) of item (19) of this subsection is initiated, the commission may obtain a decree of the court for enforcement of its order upon a showing that a copy of the petition for enforcement was served upon the party subject to the dictates of the commission's order.

 (d) For complaints asserting expressly or in substance a violation of Section 1‑13‑80 by employers, employment agencies or labor organizations, including municipalities, counties, special purpose districts, school districts, and local governments, but not including employers, employment agencies or labor organizations covered by Section 1‑13‑90(c), the procedure shall be as follows:

 (1) The Commissioner shall assign one or more of his employees or agents to investigate the complaint, in which case one shall be designated the investigator in charge of the complaint.

 (2) The Commission shall institute an investigation by its employees to ascertain the facts relating to such alleged unlawful employment practice. In its investigation of a charge filed under this chapter, the Commission or its designated employees shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated that relates to unlawful employment practices covered by this chapter and is relevant to the charge under investigation. If any persons fail to permit access to such evidence, the Commission may issue a subpoena duces tecum and thereby compel the production for examination and copying of such evidence. If any person fails to comply with a subpoena issued under this chapter, the Commission may request an order of a court of competent jurisdiction requiring compliance with the subpoena. The person against whom an order of court is sought shall be given at least four days' notice of the time and place of the court hearing and may appear and oppose the granting of any order. Any person may, after giving the Commission at least four days' notice, move before a court of competent jurisdiction for an order quashing any subpoena issued under this subsection. Information gathered during an investigation under this subsection shall not be made public by the Commission, its officers or employees, except for information made public as a result of being offered or received into evidence in an action brought under this subsection.

 (3) The complaint may be resolved at any time by conference, conciliation and persuasion with the complainant and the party complained of, such resolution to be embodied in a conciliation agreement, which may include an agreement by the respondent to refrain from committing unlawful discriminatory practices in the future, and which may contain such further provisions as are agreed upon by the complainant and the party complained of. Nothing said or done during and as part of such informal endeavors may be made public by the Commission or used as evidence in a subsequent proceeding.

 (4) If not sooner resolved, the investigator shall upon completion of his investigation submit to the Commissioner a statement of the facts disclosed by his investigation and recommend either that the complaint be dismissed or that the Commission bring an action in equity in circuit court against the respondent. The Commissioner, after a review of the case file and the statement and recommendation of the investigator, may issue an order either to dismiss the charge or to bring an action in equity in circuit court against the respondent, which order shall not be subject to judicial or other further review.

 (5) If the order be of dismissal, the Commissioner shall mail a copy of the order to the complainant and to the respondent at their last known addresses.

 (6) If a charge filed with the commission by a complainant pursuant to this chapter is dismissed by the commission, or if within one hundred eighty days from the filing of the charge the commission has not filed an action under this chapter or entered into a conciliation agreement to which the complainant is a party, the complainant may bring an action in equity against the respondent in circuit court. The action must be brought within one year from the date of the violation alleged, or within one hundred twenty days from the date the complainant's charge is dismissed, whichever occurs earlier, except that this period may be extended by written consent of the respondent.

 (7) If within thirty days after issuance of its determination the Commission is unable to secure from the respondent a conciliation agreement acceptable to the Commission, or if the Commission determines after investigation that the respondent has violated the terms of a conciliation agreement, the Commission may bring an action in equity against the respondent in circuit court. Such action shall be brought within one year from the date of the violation alleged, except that this period may be extended by written consent of the respondent.

 (8) No action may be brought under this chapter by a complainant if an action based on the same charge has been brought by the Commission, and no action may be brought under this chapter by the Commission if an action based on the same charge has been brought by the complainant. No action may be brought under this chapter if an action alleging essentially the same facts and seeking relief for the same complainant has been brought in any federal court. Any action brought under this chapter shall be promptly dismissed if an action alleging essentially the same facts and seeking relief for the same complainant is brought in any federal court.

 (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, 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, 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) If in the course of processing any complaint under the procedure set forth in (e) above sufficient facts shall appear warranting the processing of the complaint under the procedure provided by subsection (c) or (d) of this section upon notice to the complainant and to the respondent, such other procedure shall thereafter be followed for the processing of the complaint.

 (g) The Commission shall establish such rules as may be necessary to govern, expedite and effectuate the procedures prescribed in this section.

HISTORY: 1962 Code Section 1‑360.29; 1972 (57) 2651; 1973 (58) 698; 1979 Act No. 24 Section 9; 1990 Act No. 333, Section 1; 1996 Act No. 426, Section 6; 2006 Act No. 387, Section 1, eff July 1, 2006.

**SECTION 1‑13‑100.** Construction and application of chapter.

 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, 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.

HISTORY: 1962 Code Section 1‑360.30; 1972 (57) 2651; 1979 Act No. 24, Section 10; 1996 Act No. 426, Section 7.

**SECTION 1‑13‑110.** Affirmative action plans by State agencies; approval by Commission; action by General Assembly.

 Each State agency shall develop an Affirmative Action Plan to assure equitable employment for members of minorities (race and sex) and shall present such Plans to the Human Affairs Commission. On or before February 1 of each year, the Human Affairs Commission shall submit a report to the General Assembly concerning the status of the Affirmative Action Plans of all State agencies. If any Affirmative Action Plans have been disapproved, the report shall contain the reasons for such disapproval. If the General Assembly takes no action within sixty (60) days on those Plans which have been disapproved, the action of the Human Affairs Commission shall be final.

HISTORY: 1978 Act No. 644, Part II, Section 3A.