**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “WORKPLACE FREEDOM ACT”; TO AMEND SECTIONS 1‑13‑20, 1‑13‑30, AS AMENDED, 1‑13‑70, 1‑13‑80, AS AMENDED, AND 1‑13‑90, ALL RELATING TO PROHIBITING DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, AGE, NATIONAL ORIGIN, OR DISABILITY, ALL SO AS TO ALSO PROHIBIT SUCH DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO DEFINE “SEXUAL ORIENTATION” AND “GENDER IDENTITY”.

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

SECTION 1. This act may be cited as the “Workplace Freedom Act”.

SECTION 2. 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.”

SECTION 3. Section 1‑13‑30 of the 1976 Code, as last amended by Act 244 of 2018, is further amended by adding appropriately lettered items at the end to read:

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

( ) ‘Gender identity’ means a gender‑related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth.”

SECTION 4. 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.”

SECTION 5. Section 1‑13‑80(A)(1)‑(3), (B), (C), (E), (G), and (I)(1), (3), and (6) of the 1976 Code is amended to read:

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

(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 to:

(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, sexual orientation, gender identity, or national origin when religion, sex, sexual orientation, gender identity, or national origin is a bona fide occupational qualification for employment.

(I) Notwithstanding ~~any other~~ another 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, 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.”

SECTION 6. 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.”

SECTION 7. 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 8. 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 9. This act takes effect upon approval by the Governor.

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