**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4907**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Magnuson, Burns, A.M. Morgan, T.A. Morgan, Long, Nutt, S. Jones, Harris, White, Pace, Beach, Chumley, May, Oremus, Trantham, Gagnon, Kilmartin and Lawson

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Introduced in the House on January 23, 2024

Currently residing in the House Committee on **Judiciary**

Summary: Consumer Protection from Indemnified Products Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/23/2024 House Introduced and read first time ([House Journal‑page 9](h:\hj\20240123.docx))

1/23/2024 House Referred to Committee on **Judiciary** ([House Journal‑page 9](h:\hj\20240123.docx))

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4907&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[01/23/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4907_20240123.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “CONSUMER PROTECTION FROM INDEMNIFIED PRODUCTS ACT” BY ADDING CHAPTER 31 TO TITLE 37 SO AS TO PROHIBIT MANDATING INDEMNIFIED PRODUCTS TO CONSUMERS WHICH WOULD RESULT IN CERTAIN LOSSES.

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

SECTION 1. This act may be cited as the “Consumer Protection from Indemnified Products Act”.

SECTION 2. Title 37 of the S.C. Code is amended by adding:

CHAPTER 31

Consumer Protection from Indemnified Products

Section 37‑31‑10. This chapter prohibits mandating indemnified products to consumers which would result in loss of employment, loss of employment opportunity, loss of promotion, loss of the ability to receive a private or public education, or coercion or harassment if a consumer declines an indemnified product.

Section 37‑31‑20. As used in this chapter the following terms have the following meaning, unless the context requires otherwise:

(1) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(2) “Educational institution” means an institution of learning not operated for profit that is empowered to confer diplomas, educational, literary, or academic degrees; that has a regular faculty, curriculum, and organized body of pupils or students in attendance throughout the usual school year; that keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate, or graduate rank.

(3) “Employer” means the State and all political subdivisions of the State and any person in this State employing one or more individuals, and any person acting in the interest of an employer directly or indirectly.

(4)(a) “Employment” means an individual’s entire service if the service is localized in this State.

(b) Service is localized in this State if:

(i) the service is performed entirely within the State; or

(ii) the service is performed both within and outside of the State but the service performed outside the State is incidental to the individual’s service within the State.

(c) “Employment” includes: an individual’s service, performed within and outside of the State, if the service is not localized in any state, but some of the service is performed in this State and:

(i) the individual’s base of operation is in this State;

(ii) if there are no base operations, then the place for which the service is directed or controlled is in this State; or

(iii) the individual’s base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this State.

(5) “Governmental agencies” means any department, division, office, bureau, board, commission, authority, nonprofit community organization, or any other agency or instrumentality created by any municipality or by the State, or to which the State is a party, which is responsible for the regulation, inspection, visitation, or supervision of facilities or which provides services to residents of facilities.

(6) “Employment opportunity” means an opportunity to be employed.

(7) “Guardian” means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) “Harassment” or “harassing” means following a knowing and wilful course of conduct directed at a specific person with the intent to seriously alarm, annoy, or bother the person and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress or be in fear of bodily injury.

(9) “Mandate” means to officially require something or to direct or require something.

(10) “Opt out” means to decline or defer.

(11) “Private or public education” means the academic program pursued by the person in obtaining the bachelor’s, master’s, or doctorate degree, with programs to include formal course work, seminars, and practice.

(12) “Promotion” means moving an employee up in the hierarchical levels within the employer’s organization, which typically results in an employee receiving higher income and benefits, a higher position, a higher level of responsibility, or higher levels of authority within the organization.

(13) “Recommendation” means expressing favorable sentiment on behalf of a person for the purpose of expressing suitability for a particular position, responsibility, or job.

(14) “Requirement” means something that is needed or wanted, compulsory or conditional.

(15) “Covered countermeasures” means:

(a) a qualified pandemic or epidemic product, as defined in 42 U.S.C. Section 247d‑6d;

(b) a security countermeasure, as defined in 42 U.S.C. Section 247d–6b(c)(1)(B); or

(c) a drug, as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, biological product, as defined by 42 U.S.C. Section 262(i), or device, as defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act, that is authorized for emergency use in accordance with section 564, 564A, or 564B of the Federal Food, Drug, and Cosmetic Act; or

(d) a respiratory protective device that is approved by the National Institute for Occupational Safety and Health under part 84 of Title 42, Code of Federal Regulations, and that the secretary determines to be a priority for use during a public health emergency declared under 42 U.S.C. Section 247d.

(16) “Indemnified products” means products including, but not limited to, covered countermeasures, for which the manufacturers and distributors are shielded from direct civil or criminal liability to consumers for personal injuries and damages resulting from use of the product as determined by federal or state law.

Section 37‑31‑30. (A) Governmental agencies, employers, private businesses, or educational institutions are prohibited from mandating indemnified products at the risk of a consumer’s:

(1) loss of employment, employment opportunity, or promotion; or

(2) loss of the ability to receive a public or private education.

(B) A consumer or guardian of a consumer has the right to decline an indemnified product which an employer, governmental agency, private business, or educational institution is recommending to the consumer without incurring harassment, loss of employment, loss of an employment opportunity, promotion, or the ability to receive a private or public education.

Section 37‑31‑40. The South Carolina Department of Consumer Affairs shall receive complaints upon the form and process it prescribes and shall pursue a case if loss of or a threat of loss of employment, promotion, employment opportunity, or the loss of the ability to receive a public or private education or harassment occurs due to a consumer or guardian of a consumer declining an indemnified product which has been recommended by an employer or governmental authority.

Section 37‑31‑50. (A) In the event that any employee is denied or fails to receive wages, benefits, or wage supplements as a result of a violation of this chapter, the employee must be afforded available civil and other remedies available by law or equity. The South Carolina Department of Labor, Licensing and Regulation shall take all appropriate actions to enforce the provisions of this chapter including, but not limited to, injunctions, cease and desist orders, and other penalties provided by law.

(B) Recovery pursuant to a violation of this chapter must be applicable to secure recovery against the merged, consolidated, or resulting corporation or other successor employer, notwithstanding anything contained in this section or elsewhere to the contrary.

(C) This section protects the employment interests of all persons engaged in employment in the State under existing labor contracts and must be liberally construed in every case in order to achieve that purpose.

Section 37‑31‑60. Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer’s rights pursuant to this chapter including, but not limited to, any right to a remedy or means of enforcement, must be considered contrary to public policy and must be voided and unenforceable. This chapter may not prevent a consumer or the guardian of a consumer to decline an indemnified product that is recommended by an employer, governmental agency, or educational institution.

Section 37‑31‑70. A consumer or guardian of a consumer must be able to opt out from recommended indemnified products by submitting in writing that he is opting out and may not be required to provide specific reasoning for opting out.

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

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