**South Carolina General Assembly**

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**H. 3589**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Norrell, Rose and Bernstein

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Introduced in the House on January 15, 2019

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

Summary: Unlawful employment practices

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/15/2019 House Introduced and read first time ([House Journal‑page 77](file:///h:\hj\20190115.docx))

1/15/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 77](file:///h:\hj\20190115.docx))

1/29/2019 House Member(s) request name added as sponsor: Bernstein

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**VERSIONS OF THIS BILL**

[1/15/2019](file:///p:\pprever\2019-20\3589_20190115.docx)

**A** **BILL**

TO AMEND SECTION 1‑13‑80, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES UNDER THE SOUTH CAROLINA CONSUMER AFFAIRS LAW, SO AS TO PROHIBIT CERTAIN EMPLOYMENT PRACTICES INVOLVING DISCLOSURES OF INFORMATION ABOUT WAGES AND WAGE HISTORIES, AND TO REQUIRE EMPLOYERS TO PROVIDE WAGE RANGES FOR EMPLOYMENT POSITIONS TO PROSPECTIVE EMPLOYEES UPON REQUEST.

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

SECTION 1. Section 1‑13‑80 of the 1976 Code, as last amended by Act 244 of 2018, is further amended to read:

“Section 1‑13‑80. (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;

(4)(a) to fail or refuse to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

(b) to deny employment opportunities to a job applicant or employee, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions of an applicant for employment or an employee;

(c) to require an applicant for employment or an employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;

(d) to require an employee to take leave under any leave law or policy of the employer if another reasonable accommodation can be provided to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions; or

(e) to take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions.

For the purposes of this item:

(i) An employer shall provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions, pursuant to this item to new employees at the commencement of employment, and existing employees within one hundred twenty days after the effective date of this item.

(ii) The notice required by subsubitem (i) also must be conspicuously posted at an employer’s place of business in an area accessible to employees. The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities under this item.

The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities under this item.

(B)(1) It is an unlawful employment practice for an employer to:

(a) require as a condition of employment that an employee refrain from inquiring about, discussing, or disclosing his wages or the wages of another employee;

(b) require an employee to sign a waiver or other document which purports to deny the employee the right to disclose or discuss his wages; or

(c) discharge, formally discipline, or otherwise discriminate against an employee for inquiring about, discussing, or disclosing his wages or the wages of another employee.

(2)(a) It is an unlawful employment practice for an employer to:

(i) rely on the wage history of a prospective employee in considering him for employment including, but not limited to, requiring that his prior wages satisfy minimum or maximum criteria as a condition of being considered for employment;

(ii) rely on the wage history of a prospective employee in determining his wages; provided that an employer may rely on wage history when it is voluntarily provided by a prospective employee, after the employer makes an offer of employment with an offer of compensation to the prospective employee, to support a wage higher than the wage offered by the employer; or

(iii) seek from a prospective employee, or any current or former employer, the wage history of the prospective employee; provided, however, that an employer may seek to confirm prior wage information only after an offer of employment with compensation has been made to the prospective employee and the prospective employee responds to the offer by providing prior wage information to support a wage higher than that offered by the employer.

(b) For the purposes of this subsection, ‘wage history’ means the wages, including benefits and other compensation, paid to the prospective employee by the prospective employee’s current employer and/or previous employer or employers.

(3) An employer shall provide the wage range for a position to a prospective employee upon request.

(C) 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~~D) 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~~E) 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~~F) 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~~G) 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~~H) 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~~I) 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~~J) 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.

(13) It is not an unlawful employment practice for a private employer to give preference in employment to a veteran. This preference is also extended to the veteran’s spouse if the veteran has a service‑connected permanent and total disability. A private employer who gives a preference in employment provided by this item does not violate any other provision of this chapter by virtue of giving the preference. For purposes of this item, ‘veteran’ has the same meaning as provided in Section 25‑11‑40.”

SECTION 2. This act takes effect upon approval by the Governor.

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