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RECALLED

April 30, 2015

**H. 3950**

Introduced by Rep. Rutherford

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Read the first time April 14, 2015.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “UNIFORM ANTIDISCRIMINATION ACT”; TO AMEND SECTION 1‑13‑20, RELATING TO POLICY OF THE STATE HUMAN AFFAIRS COMMISSION, SO AS TO EXPAND THE DEFINITION OF DISCRIMINATION TO INCLUDE DISCRIMINATION BASED ON SEXUAL ORIENTATION; TO AMEND SECTION 1‑13‑80, AS AMENDED, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES, SO AS TO ESTABLISH THAT IT IS UNLAWFUL FOR AN EMPLOYER TO DISCRIMINATE AGAINST AN INDIVIDUAL BECAUSE OF THE INDIVIDUAL’S SEXUAL ORIENTATION; TO AMEND SECTION 1‑32‑60, RELATING TO THE APPLICABILITY AND CONSTRUCTION OF THE RELIGIOUS FREEDOM ACT, SO AS TO ESTABLISH THAT THE RELIGIOUS FREEDOM ACT DOES NOT ALLOW A PERSON TO DISCRIMINATE AGAINST AN INDIVIDUAL BASED ON THE INDIVIDUAL’S RACE, RELIGION, COLOR, SEX, SEXUAL ORIENTATION, AGE, NATIONAL ORIGIN OR DISABILITY; TO AMEND SECTION 31‑21‑40, RELATING TO FAIR HOUSING, SO AS TO MAKE IT UNLAWFUL FOR A PERSON TO DISCRIMINATE AGAINST AN INDIVIDUAL BASED ON THEIR SEXUAL ORIENTATION WHEN SELLING OR RENTING PROPERTY; TO AMEND SECTION 31‑21‑50, RELATING TO FAIR HOUSING, SO AS TO PROHIBIT THE DENIAL OF ACCESS TO, OR MEMBERSHIP OR PARTICIPATION IN, A MULTIPLE‑LISTING SERVICE OR SIMILAR SERVICE OR ORGANIZATION BASED ON THE PERSON’S SEXUAL ORIENTATION; TO AMEND SECTION 31‑21‑60, RELATING TO FAIR HOUSING, SO AS TO PROHIBIT DISCRIMINATION IN RELATION TO RESIDENTIAL REAL ESTATE‑RELATED TRANSACTIONS BASED ON A PERSON’S SEXUAL ORIENTATION; TO AMEND SECTION 44‑69‑80, RELATING TO HOME HEALTH AGENCIES, SO AS TO PROHIBIT A HOME HEALTH AGENCY FROM DISCRIMINATING AGAINST A PATIENT OR POTENTIAL PATIENT ON THE BASIS OF SEXUAL ORIENTATION; TO AMEND SECTION 44‑71‑90, RELATING TO HOSPICE PROGRAMS, SO AS TO PROHIBIT A HOSPICE PROGRAM FROM DISCRIMINATING AGAINST A POTENTIAL PATIENT ON THE BASIS OF SEXUAL ORIENTATION; AND TO AMEND SECTION 45‑9‑10, RELATING TO HOTELS, MOTELS, RESTAURANTS, AND BOARDINGHOUSES, SO AS TO PROHIBIT THE DISCRIMINATION AGAINST A PERSON OR SEGREGATION FROM A PLACE OF PUBLIC ACCOMMODATION ON THE BASIS OF SEX OR SEXUAL ORIENTATION.

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

SECTION 1. This act may be cited as the “Uniform Antidiscrimination 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, 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, age, national origin, or disability.”

SECTION 3. Section 1‑13‑80 of the 1976 Code, as last amended by Act 210 of 2014, 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, sexual orientation, 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, 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, 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, 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, sexual orientation, 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, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, 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, sexual orientation, 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, 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, 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)~~(a) 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)~~(b) 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)~~(b), 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)~~(a) 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)~~(b) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(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 4. Section 1‑32‑60 of the 1976 Code is amended to read:

“Section 1‑32‑60. (A) This chapter applies to all state and local laws and ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether adopted before or after the effective date of this act.

(B) Nothing in this chapter may be construed to authorize the State to burden any religious belief.

(C) Nothing in this chapter may be construed to affect, interpret, or in any way address:

(1) that portion of the First Amendment of the United States Constitution prohibiting laws respecting the establishment of religion;

(2) that portion of Article I, Section 2 of the State Constitution prohibiting laws respecting the establishment of religion.

(D) Granting state funding, benefits, or exemptions, to the extent permissible under the constitutional provisions enumerated in subsection (C)(1) and (2), does not constitute a violation of this chapter.

As used in this subsection, ‘granting’, with respect to state funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(E) Nothing in this chapter may be construed to authorize a person to discriminate against an individual based on the individual’s race, religion, color, sex, sexual orientation, age, national origin, or disability.”

SECTION 5. Section 31‑21‑40 of the 1976 Code is amended to read:

“Section 31‑21‑40. It is unlawful:

(1) to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, sexual orientation, familial status, or national origin;

(2) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with it, because of race, color, religion, sex, sexual orientation, familial status, or national origin;

(3) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, handicap, familial status, or national origin or an intention to make the preference, limitation, or discrimination;

(4) to represent to any person because of race, color, religion, sex, sexual orientation, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when the dwelling is available;

(5) for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, handicap, familial status, or national origin;

(6) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

(a) that buyer or renter;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that buyer or renter;

(7) to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of:

(a) that person;

(b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) any person associated with that person.”

SECTION 6. Section 31‑21‑50 of the 1976 Code is amended to read:

“Section 31‑21‑50. It is unlawful to deny any person access to, or membership or participation in, any multiple‑listing service, real estate brokers’ organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against him in the terms or conditions of the access, membership, or participation on account of race, color, religion, sex, sexual orientation, handicap, familial status, or national origin.”

SECTION 7. Section 31‑21‑60 of the 1976 Code is amended to read:

“Section 31‑21‑60. (A) It is unlawful for any person or other entity whose business includes engaging in residential real estate‑related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, handicap, familial status, or national origin.

(B) As used in this section, ‘residential real estate‑related transaction’ means any of the following:

(1) the making or purchasing of loans or providing other financial assistance:

(a) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(b) secured by residential real estate;

(2) the selling, brokering, or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, sexual orientation, handicap, or familial status.”

SECTION 8. Section 44‑69‑80 of the 1976 Code is amended to read:

“Section 44‑69‑80. Home health agencies shall not discriminate based on age, sex, sexual orientation, race, color, or source of payment in the recruitment, location of patient, acceptance or provision of goods and services to patients or potential patients, provided that payment offered is not less than the cost of providing services.”

SECTION 9. Section 44‑71‑90 of the 1976 Code is amended to read:

“Section 44‑71‑90. Hospices must not discriminate based on age, sex, sexual orientation, race, color, religion, or source of payment, location of patient, acceptance or provision of goods and services to patients of potential patients.”

SECTION 10. Section 45‑9‑10 of the 1976 Code is amended to read:

“Section 45‑9‑10. (A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 of this chapter, without discrimination or segregation on the ground of race, color, sex, sexual orientation, religion, or national origin.

(B) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this chapter if discrimination or segregation by it is supported by state action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;

(3) any hospital, clinic, or other medical facility which provides overnight accommodations;

(4) any retail or wholesale establishment;

(5) any motion picture house, theater, concert hall, billiard parlor, saloon, barroom, golf course, sports arena, stadium, or other place of amusement, exhibition, recreation, or entertainment; and

(6) any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

(C) ‘Supported by state action’ means the licensing or permitting of any establishment or any agent of an establishment listed above, subject to the exclusion provided in Section 45‑9‑20, which has or must have a license or permit from the State, its agencies, or local governmental entities to lawfully operate.”

SECTION 11. This act takes effect upon approval by the Governor.

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