Committee Report

April 11, 2024

H. 5169

Introduced by Reps. Haddon, G.M. Smith, Hiott, Taylor, Hixon, Forrest, Wooten, Crawford, Gibson, Hartnett, Robbins, Sessions, Mitchell, T. Moore, Gilliam, Brewer, Ligon, Bradley, Brittain, Guest, B.L. Cox, Long, Chapman, J.E. Johnson, Burns, O'Neal, Vaughan, McCravy, Davis, Nutt, Trantham, Hyde, McGinnis, Hardee, Bailey, S. Jones, Guffey, West, Schuessler, Gatch, Gagnon, Herbkersman, Lawson, Moss, Murphy, Chumley, Carter, Magnuson, M.M. Smith, Pope, Cromer, Oremus and Beach

S. Printed 04/11/24--S.

Read the first time April 02, 2024

\_\_\_\_\_\_\_\_

The committee on Senate Agriculture and Natural Resources

To whom was referred a Bill (H. 5169) to amend the South Carolina Code of Laws by adding Article 3 to Chapter 1, Title 46 by enacting the “Farmers Protection Act” to prevent discrimination in financing, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, by striking Section 46-1-310(1) and inserting:

(1) “Agriculture producer” means a person or company authorized to do business in South Carolina and engaged in the production of goods derived from plants or animals including the growing of crops, animal husbandry, or production of livestock or dairy products.

Amend the bill further, SECTION 1, by striking Section 46-1-310(6) and inserting:

(6) “ESG commitment” means any purpose for a financial institution’s decision to join any initiative or organization that has a purpose for its signatories’ or members’ customers to be aligned with any environmental, social, or political goals to deny agriculture producers financial services based on these institutions’ policies on greenhouse gas emissions, use of fossil fuel-derived fertilizers, or fossil fuel-powered machinery by these agriculture producers. Evidence of an ESG commitment includes, but is not limited to, any of the following:

(a) advertising, statements, explanations, reports, or statements of principles; and

(b) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement the purpose of which is to use business activity to further environmental, social, or political goals.

Amend the bill further, SECTION 1, by striking Section 46-1-320(C) and inserting:

(C) A financial institution may overcome the inference in subsection (B) by demonstrating that its denial or restriction of a financial service was based solely on documented risk analysis and not on any ESG commitment.

Renumber sections to conform.

Amend title to conform.

WES CLIMER for Committee.

\_\_\_\_\_\_\_

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 46 BY ENACTING THE “FARMERS PROTECTION ACT” TO PREVENT DISCRIMINATION IN FINANCING AGAINST FARMERS.

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

SECTION 1. Chapter 1, Title 46 of the S.C. Code is amended by adding:

Article 3

Farmers Protection Act

Section 46‑1‑310. For purposes of this article:

(1) “Agriculture producer” means a person or company authorized to do business in South Carolina and engaged in the production of goods derived from plants or animals including, but not limited to, the growing of crops, animal husbandry, or the production of livestock or dairy products.

(2) “Commissioner” means the Commissioner of the Department of Agriculture.

(3) “Company” means a for‑profit organization, association, corporation, partnership, joint venture, sole proprietorship, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority‑owned subsidiary, parent company, or affiliate of those entities or business associations authorized to do business in South Carolina.

(4) “Denies or restricts” means refusing to provide services, terminating existing services, or restricting or burdening the scope or nature of services offered or provided.

(5) “Discriminate in the provision of financial services” means to deny or restrict services and thereby decline to provide financial services.

(6) “ESG commitment” means any purpose for a financial institution’s customers, or a financial institution’s decision to join any initiative or organization that has a purpose for its signatories’ or members’ customers to be aligned with any environmental, social, or political goals to deny agriculture producers financial services based on these institutions’ policies on greenhouse gas emissions, use of fossil fuel-derived fertilizers, or fossil fuel-powered machinery by these agriculture producers. Evidence of an ESG commitment includes, but is not limited to, any of the following:

(a) advertising, statements, explanations, reports, or statements of principles; and

(b) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement the purpose of which is to use business activity to further environmental, social, or political goals.

(7) “Financial institution” means a company authorized to do business in South Carolina that has total assets over one hundred billion dollars and offers financial services. A financial institution includes any affiliate or subsidiary company, even if that affiliate or subsidiary company is also a financial institution.

(8) “Financial service” means any product or service that is of a financial nature and is offered by a financial institution.

Section 46‑1‑320. (A) A financial institution may not discriminate in the provision of financial services to an agriculture producer based, in whole or in part, upon the agriculture producer’s greenhouse gas emissions, use of fossil‑fuel derived fertilizer, or use of fossil‑fuel powered machinery.

(B) If a financial institution has made any ESG commitment related to agriculture, there is an inference that the institution’s denial or restriction of a financial service to an agriculture producer violates subsection (A).

(C) A financial institution may overcome the inference in subsection (B) by demonstrating that its denial or restriction of a financial service was based solely on documented financial considerations, and not on any ESG commitment.

Section 46‑1‑330. Section 46‑1‑320 may be enforced by the South Carolina Attorney General. Any violation of Section 46‑1‑320 constitutes an unfair trade practice in violation of Chapter 5, Title 39, and the Attorney General may investigate and seek remedies as provided in that law.

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑