SPONSOR: Sen. Mantzavinos & Sen. Brown & Rep. Griffith
Sens. Bonini, Gay, Hansen, Lockman, S. McBride, Pinkney, Sokola, Sturgeon, Townsend; Reps. Baumbach, Heffernan, Longhurst, K. Williams

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 211
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 711. Unlawful employment practices, employer practices.

(a) Definitions. — As used in this section:

(1) "Certifying body or organization" means an independent body or entity duly accredited to issue a formal certification that an applicant meets specific local, state, or national standards or requirements.

(2) "Licensing body or organization" means an agency, board, association, or other entity that authorizes individuals to practice a profession in the state and issues a license, certificate, permit, or other authorization to the individual which is required to legally conduct business in the state.

(3) "Regulatory body or organization" means a government agency or entity established by legislation to enforce that legislation and to set and enforce standards implementing the legislation.

(m) It shall be an unlawful employment practice for an employer to request or require a prospective employee's age, date of birth, dates of attendance at or date of graduation from an educational institution on an initial employment application, provided that the provisions of this subsection shall not apply to any employer requesting or requiring such information (1) based on a bona fide occupational qualification or need, or (2) when such information is required to comply with any provision of state or federal law, or the requirements of any regulatory, licensing, or certifying body or organization.

For age to constitute "a bona fide occupational qualification or need" under this section, an employer must establish that age is an essential component of one's ability to successfully perform a particular job and is necessary to the normal operation of the business.

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~~(l)~~ (n) Notwithstanding any other provision of this subchapter:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, genetic information, age, sex (including pregnancy), sexual orientation, gender identity, or national origin in those certain instances where religion, genetic information, age, sex (including pregnancy), 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; and

(2) It shall not be 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 such 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 such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

~~(m)~~ (o) Notwithstanding any other provision of this subchapter, it shall not be 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, provided that such differences are not the result of an intention to discriminate because of race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, marital status, genetic information, color, religion, age, sex (including pregnancy), sexual orientation, gender identity, or national origin.

~~(n)~~ (p) Nothing contained in this subchapter as it applies to discrimination because of age or sex shall be interpreted to affect or interfere with the retirement policy or system of any employer or the underwriting or administration of a bona fide employee welfare or benefit plan, provided that such policy, system or plan is not merely a subterfuge to evade the purpose of this subchapter.

~~(o)~~ (q) (1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of such an employee, which equals, in the aggregate, at least $44,000.

(2) In applying the retirement benefit test of paragraph (o)(1) of this section, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Secretary, United States Department of Labor, pursuant to 29 U.S.C. § 631(c)(2), 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.

~~(p)~~ (r) Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married employees.

~~(q)~~ (s) Nothing in this subchapter shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity.

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