A BILL TO BE ENTITLED
AN ACT AMENDING THE STATE PERSONNEL ACT TO INCLUDE SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION TO THE LIST OF CLASSIFICATIONS COVERED BY THE STATE’S EQUAL EMPLOYMENT OPPORTUNITY LAW AND REQUIRING LOCAL BOARDS OF EDUCATION TO ADOPT POLICIES FOR NONDISCRIMINATION IN EMPLOYMENT, INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION AMONG THE COVERED CLASSIFICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 126-16 reads as rewritten:
“§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions. All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, sexual orientation, gender identity or expression, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of age.”

SECTION 2. G.S. 126-34.1 reads as rewritten:
“§ 126-34.1. Grounds for contested case under the State Personnel Act defined. (a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:
(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.
(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:
a. Denial of promotion, transfer, or training, on account of the employee’s age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as defined by Chapter 168A of the General Statutes.
b. Demotion, reduction in force, or termination of an employee in retaliation for the employee’s opposition to alleged discrimination on
account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(8) Denial of promotion in violation of G.S. 126-14.2, where an initial determination found probable cause to believe there has been a violation of G.S. 126-14.2.

(9) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(10) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, sexual orientation, gender identity or expression, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

(11) Violation of any of the following federal statutes as applied to the employee:

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as defined by Chapter 168A of the General Statutes.

This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age. An applicant may not, however, file a contested case where political affiliation was the reason for the person's nonselection for (i) an exempt policymaking position as defined in G.S. 126-5(b)(3), (ii) a chief deputy or chief administrative assistant position under G.S. 126-5(c)(4), or (iii) a confidential assistant or confidential secretary position under G.S. 126-5(c)(2).

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.
(5) Denial of employment in violation of G.S. 126-14.2, where an initial determination found probable cause to believe that there has been a violation of G.S. 126-14.2.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the Office of Administrative Hearings through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126.

SECTION 3. G.S. 126-36 reads as rewritten:


(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied the employee or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination or because of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation, gender identity or expression, or handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the Office of Administrative Hearings.

(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the Office of Administrative Hearings:

(1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, sexual orientation, gender identity or expression, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.

(2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, sexual orientation, gender identity or expression, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

SECTION 4. Article 22 of Chapter 115C of the General Statutes is amended by adding a new Part to read:


§ 115C-335.10. School personnel nondiscrimination policy.

(a) Each local board of education shall adopt a policy of nondiscrimination in its personnel policies and practices on the basis of race, religion, color, national origin, age, sex, sexual orientation, gender identity or expression, or disability.

(b) For the purposes of this section, the term "school personnel" means any (i) employee of a local board of education, whether full-time or part-time, or (ii) independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local, or other funds. The term includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians."
SECTION 5. Nothing in this act shall be construed as requiring the State or any employer, employment agency, or labor organization to give preferential treatment or special rights based on sexual orientation, gender identity or expression or to implement special affirmative action policies or programs based on sexual orientation, gender identity or expression.

SECTION 6. This act is effective when it becomes law.