**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT “THE VOCATIONAL REHABILITATION ACT OF 2011” BY ADDING CHAPTER 30 TO TITLE 43 SO AS TO CREATE THE DIVISION OF VOCATIONAL REHABILITATION WITHIN THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, TO TRANSFER THE APPROPRIATIONS, FUNCTIONS, POWERS, DUTIES, RESPONSIBILITIES, AND AUTHORITY STATUTORILY EXERCISED BY THE DEPARTMENT OF SOCIAL SERVICES CONCERNING THE VOCATIONAL REHABILITATION SERVICES TO THE DEPARTMENT, TO PROVIDE THE POLICY OF THIS STATE WITH RESPECT TO VOCATION REHABILITATION, TO PROVIDE CERTAIN DEFINITIONS, TO PROVIDE DUTIES OF THE DIVISION, TO PROVIDE THE DEPARTMENT SHALL APPOINT A DIRECTOR OF THE DIVISION, TO PROVIDE DUTIES AND POWERS OF THE DIVISION DIRECTOR, TO MANDATE VOCATIONAL REHABILITATION SERVICES STATEWIDE, TO CREATE A VOCATIONAL REHABILITATION FUND AND PROVIDE FOR ITS FUNDING AND ADMINISTRATION, TO PROVIDE FOR THE ACCEPTANCE AND USE OF GIFTS TO THE FUND, TO PROVIDE APPROPRIATIONS FROM THE GENERAL ASSEMBLY TO THE DIVISION, TO PROVIDE THE USE OF OTHER FUNDING MUST BE SOUGHT AND USED BEFORE STATE FUNDING CAN BE USED FOR VOCATIONAL REHABILITATION SERVICES UNDER THIS CHAPTER, TO REGULATE THE USE OF CERTAIN INFORMATION GATHERED IN THE COURSE OF CONDUCTING THE PURPOSES OF THIS CHAPTER, TO PROVIDE FOR THE AVAILABILITY OF VOCATIONAL REHABILITATION SERVICES TO INCARCERATED PERSONS, AND TO PROVIDE CRITERIA FOR A VOCATION REHABILITATION COUNSELOR; AND TO REPEAL CHAPTER 31, TITLE 41 RELATING TO VOCATIONAL REHABILITATION.

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

SECTION 1. Title 43 of the 1976 Code is amended by adding:

“CHAPTER 30

Vocational Rehabilitation

Section 43‑30‑10. This chapter must be cited as ‘The Vocational Rehabilitation Act of 2011’.

Section 43‑30‑20. The Division of Vocational Rehabilitation is created within the Department of Employment and Workforce. The appropriations, functions, powers, duties, responsibilities, and authority statutorily exercised by the Department of Social Services concerning the vocational rehabilitation services are transferred to the Department of Employment and Workforce.

Section 43‑30‑30. The policy of this State is to provide needed and feasible rehabilitation services to eligible handicapped individuals throughout the State so they may ultimately engage in useful and remunerative occupations to the extent of their capabilities, consequently increasing the social and economic well‑being of their families and themselves while also increasing the productive capacity of this State and nation in a manner that reduces the burden of dependency on families and taxpayers.

Section 43‑30‑40. For the purposes of this chapter:

(1) ‘Department’ means the Department of Employment and Workforce.

(2) ‘Director’ means the Director of the Department of Employment and Workforce.

(3) ‘Division’ means the Division of Vocational Rehabilitation.

(4) ‘Division Director’ means the Director of the Division of Vocational Rehabilitation.

(5) ‘Eligible’ or ‘eligibility’ when used in relation to the qualification of an individual for a vocational rehabilitation service means a certification that:

(a) a physical or mental disability is present;

(b) a substantial handicap to employment exists; and

(c) vocational rehabilitation services may reasonably be expected to render the individual fit to engage in a gainful occupation.

(6) ‘Eligible physically handicapped individual’, when used with respect to diagnostic and related services, training, guidance, and placement means a physically handicapped person, except a person qualifying under vocational rehabilitation for the blind, whose vocational rehabilitation or self‑care rehabilitation is determined feasible by the division director, and when used with respect to other vocational rehabilitation services means an individual meeting the above requirement who is also found by the division director to require financial assistance with respect to it, after full consideration of his eligibility for another similar benefit by the way of pension, compensation, or insurance.

(7) ‘Establishment of a workshop or rehabilitation facility’ means:

(a) in the case of a workshop, the expansion, remodeling, or alteration of an existing building necessary to adapt this building to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops; and

(b) in the case of a rehabilitation facility, the expansion, remodeling, or alteration of an existing building and initial equipment of this building necessary to adapt it to rehabilitation facility purposes or to increase its effectiveness for these purposes, subject to limitations as the United States Department of Health, Education, and Welfare may by regulations prescribe to prevent impairment of the objectives of, or duplication of, other federal laws providing federal assistance to states in the construction of these facilities, and initial staffing of these facilities for a period of not more than one year.

(8) ‘Nonprofit’, when used with respect to a rehabilitation facility or a workshop, means a rehabilitation facility and a workshop, respectively, owned and operated by a corporation or association, no part of the net earnings of which may inure to the benefit of a private shareholder or individual and the income of which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954.

(9) ‘Physically handicapped individual’ means a person:

(a) who is not an individual qualifying under vocational rehabilitation of the blind but who is under a physical or mental disability that constitutes a substantial handicap to employment and is of a nature that a vocational rehabilitation service may reasonably be expected to render him fit to engage in a remunerative occupation; and

(b) of an employable age and has a physical or mental disability so handicapping that it requires he be institutionalized or have the services of an attendant in order to provide his daily living requirements.

(10) ‘Rehabilitation facility’ means a facility operated for the primary purpose of assisting in the rehabilitation of physically handicapped individuals and provides:

(a) one or more of the following services:

(i) testing, fitting, or training in the use of prosthetic devices;

(ii) prevocational or conditional therapy;

(iii) physical or occupational therapy;

(iv) adjustment training; or

(v) evaluation or control of special disabilities; or

(b) an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision, but only where the major portion of this evaluation and these services is furnished within the facility and that all medical and related health services are prescribed by, or are under the formal supervision of, a person licensed to practice medicine or surgery in this State.

(11) ‘Remunerative occupation’ means employment as an employee or self‑employed, practice of a profession, homemaking, farm or family work for which payment is in kind rather than in cash, sheltered employment, and home industry or other homebound work of a remunerative nature.

(12) ‘Self‑care rehabilitation services’ means diagnostic, psychological, medical, surgical, physical restoration, guidance, training, and related services including equipment and prosthetic appliances and training in their use needed to enable a severely handicapped person to dispense with, or largely dispense with, the need for institutional care or for the services of an attendant and to achieve, to a practicable extent, the ability for independent living.

(13) ‘Vocational rehabilitation services’ means:

(a) diagnostic and related services, including transportation, incidental to the determination of eligibility for, and the nature and the scope of, services to be provided;

(b) training, guidance and placement services for physically handicapped individuals; and

(c) in the case of any such individual found to require financial assistance with respect to it, after full consideration of his eligibility for a similar benefit by way of pension, compensation, and insurance, any other goods and services necessary to render him fit to engage in a remunerative occupation, including remunerative homebound work, including the following physical restoration and other goods and services:

(i) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such a nature that this correction or modification may reasonably be expected to eliminate or substantially reduce such handicap within a reasonable length of time;

(ii) necessary hospitalization in connection with surgery or treatment specified in subitem (a);

(iii) prosthetic devices essential to obtaining or retaining employment;

(iv) maintenance furnished to the extent needed to enable an individual to derive the full benefit of other vocational rehabilitation services provided;

(v) tools, equipment, initial stocks, and supplies including equipment and initial stocks and supplies for vending stands, books and training materials to which the State may retain legal title;

(vi) transportation, except where necessary in connection with determination of eligibility or nature and scope of services, and occupational licenses;

(vii) acquisition of vending stands or other equipment and initial stocks and supplies for use by severely handicapped individuals in any type of small business, the operation of which will be improved through management and supervision by the division; and

(viii) establishment of public and other nonprofit rehabilitation facilities to provide services for physically handicapped individuals and the establishment of public and other nonprofit workshops for the severely handicapped.

(14) ‘Workshop’ means a place:

(a) where manufacture or handiwork is conducted; and

(b) operated for the primary purpose of providing remunerative employment to severely handicapped individuals who cannot be readily absorbed in the competitive labor market.

Section 43‑30‑50. (A) The division shall provide the vocational rehabilitation services authorized by this chapter to every physically handicapped individual determined by the division director or his designee to be eligible for these services. In carrying out the purposes of this chapter, the division may, among other things:

(1) cooperate with other departments, agencies, and institutions, both public and private, in providing vocational rehabilitation services, in studying the problems involved in providing these services, and in establishing, developing, and providing in conformity with the purposes of this chapter necessary or desirable programs, facilities, and services;

(2) enter into reciprocal agreements with other states to provide for services authorized by this chapter to residents of the states concerned;

(3) conduct research and compile statistics relating to the provision of services to or the need of services by disabled individuals;

(4) enter into contractual arrangements with the federal government and with other authorized public agencies or persons for performance of services related to vocational rehabilitation;

(5) contract with schools, hospitals, and other agencies, and with doctors, optometrists, nurses, technicians and other persons, for training, physical restoration, transportation, and other vocational rehabilitation services;

(6) take necessary action to enable the division to apply for, accept, and receive for the State and its residents the full benefits available under the Vocational Rehabilitation Act of Congress and amendments to that act, and under other federal legislation or program having as its purpose the providing of, improvement or extension of, vocational rehabilitation services.

(B) The division may not assume responsibility for permanent custodial care of an individual and may provide rehabilitation services only for a period sufficient to accomplish the rehabilitation objective or determine that rehabilitation is not feasible through the services the division can make available to the individual.

Section 43‑30‑60. The department shall appoint a Director of the Division of Vocational Rehabilitation in accordance with established personnel standards and on the basis of his education, training, experience, and demonstrated ability. The division director shall serve as executive officer of the division.

Section 43‑30‑70. (A) The division director shall, subject to the approval of the director of the department:

(1) facilitate the promulgation of regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination for eligibility, procedures for fair hearings, and other regulations as the division director considers necessary to conduct the purposes of this chapter;

(2) establish appropriate subordinate administrative units;

(3) appoint personnel he considers necessary for the efficient performance of the functions of the division;

(4) take other actions he considers necessary or appropriate to conduct the purposes of this chapter;

(5) prepare and submit to the department annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for conducting the purposes of this chapter and estimates of the amounts to be made available for these purposes from all sources; and

(6) certify for disbursement of funds available for conducting the purposes of this chapter, subject to applicable regulations;

(B) The division director may, with the approval of the department, delegate any of his powers and duties, except those concerning the appointment of personnel, to an officer or employee of the division.

Section 43‑30‑80. This chapter must be administered under the general supervision and direction of the department by the division director.

Section 43‑30‑90. Pursuant to the policy declared in Section 43‑30‑30, the division shall provide vocational rehabilitation services throughout the State, and the vocational rehabilitation plan adopted pursuant to this chapter must be in effect in all political subdivisions of the State.

Section 43‑30‑100. A rehabilitation service provided under this chapter must be available to a civil employee of the United States disabled while in the performance of his duty on the same terms and conditions as apply to other people.

Section 43‑30‑110. There is created a special fund known as the vocational rehabilitation fund. This fund must consist of all money appropriated by the State and all money received from the United States or any other source for such purpose, as provided by this chapter. All money in this fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other public funds in the State Treasury. All money in this fund are appropriated and made available to the division, and shall be expended solely for the purposes of this chapter. Any balances in the fund shall not lapse at any time but shall be continuously available to the division for expenditure consistent with this chapter. The division, acting through the division director, shall issue its requisition for payment of all costs of administering this chapter to the Comptroller General, who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the vocational rehabilitation fund.

Section 43‑30‑120. (1) The division director may, with the approval of the department, accept and use gifts made unconditionally by will or otherwise for conducting the purposes of this chapter. A gift made under conditions that the department considers proper and consistent with the provisions of this chapter may be accepted and must be held, invested, reinvested, and used in accordance with the condition of the gift.

(2) The division may accept federal funds and other funds to use for vocational rehabilitation, subject to restrictions imposed by the donor if those restrictions are consistent with this chapter.

(3) Federal grants and donations for vocational rehabilitation services, unless otherwise restricted, must be available for all vocational rehabilitation services provided under this chapter and also for the purpose, whenever federal funds are made available to the State under Section 3 of the Federal Vocational Rehabilitation Amendments of 1954, for the extension and improvement of vocational rehabilitation services, or under Section 4 of that act for projects for research, demonstrations, training and traineeships, and the planning for and initiating expansion of vocational rehabilitation services under the State plan.

Section 43‑30‑130. The General Assembly shall appropriate for vocational rehabilitation such sums as are necessary, along with available federal and other funds, to conduct the purposes of this chapter.

Section 43‑30‑140. As required by the federal Vocational Rehabilitation Acts and any amendments to them, including rules and regulations issued pursuant to these acts, the division shall give full consideration to similar benefits available to a handicapped individual, including private, group or other insurance benefits, to meet, in whole or in part, the cost of a vocational rehabilitation service prior to expenditure of public funds. To the extent that an individual is eligible for these other benefits, including private, group or other insurance benefits, these benefits must be used. An insurance carrier shall not deny payment of a benefit otherwise available solely on the basis that a handicapped individual has applied for, or has been considered eligible to receive, a vocational rehabilitation service as provided by the division.

Section 43‑30‑150. A person may solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of a list of, or names of, or any information concerning people applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, communications of the State or subdivisions or agencies of the State, or acquired in the course of the performance of official duties without the written consent of each applicant and recipient, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations. These records, papers, files and communications must be regarded as confidential and privileged information.

Section 43‑30‑160. In addition to the duties of the division pursuant to Sections 43‑30‑30 and 43‑30‑50, the division shall provide services authorized by this chapter to individuals who have committed criminal offenses and are or have been incarcerated in the Department of Corrections when these individuals suffer from physical or mental disabilities that may constitute a substantial handicap to employment.

Section 43‑30‑170. A counselor for the division must have:

(1) a master’s degree in rehabilitation counseling;

(2) a master’s degree in the field of counseling with a graduate course in theories and techniques of counseling; or

(3) a master’s degree in any discipline and at least eighteen documented hours of coursework at the master’s level or above within thirty months of the date of hire including:

(a) one graduate course with a primary focus on the theories and techniques of counseling;

(b) three graduate courses, each with a primary focus on one of the following areas:

(i) occupational information;

(ii) job development and placement;

(iii) medical aspects of disabilities;

(iv) foundations of rehabilitation;

(v) psychological aspects of disabilities;

(vi) personal and vocational adjustment; and

(c) two graduate courses, each with a primary focus on one of the following areas:

(i) assessment;

(ii) research methodology;

(iii) vocational and career development;

(iv) community resources;

(v) case management;

(vi) delivery of rehabilitation services; or

(4) a current Certified Rehabilitation Counselor (CRC) certificate, regardless of degree.”

SECTION 2. Chapter 31, Title 41 is repealed.

SECTION 3. The Code Commissioner is directed to change all references in the 1976 Code from “Department of Vocational Rehabilitation” to “Division of Vocational Rehabilitation” and all references from the “Commissioner of the Department of Vocational Rehabilitation” to the “Division Director” or “Director of the Division of Vocational Rehabilitation”.

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑