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Summary: S.C. Minimum Wage Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/13/2016 Senate Referred to Committee on **Labor, Commerce and Industry**

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**VERSIONS OF THIS BILL**

[12/13/2016](file:///p:\pprever\2017-18\188_20161213.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA MINIMUM WAGE ACT”; BY ADDING ARTICLE 3 TO CHAPTER 10, TITLE 41 SO AS TO PROVIDE FOR A CITATION AND THE PURPOSE OF THE ACT, TO PROVIDE EMPLOYERS SHALL PAY EMPLOYEES A CERTAIN MINIMUM WAGE, TO PROVIDE A MECHANISM FOR THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE TO ADJUST THIS MINIMUM WAGE BY THE RATE OF INFLATION ANNUALLY, TO PROVIDE IT IS UNLAWFUL FOR AN EMPLOYER TO RETALIATE AGAINST AN EMPLOYEE WHO EXERCISES HIS RIGHTS WITH RESPECT TO THIS MINIMUM WAGE, AND TO PROVIDE CERTAIN REMEDIES TO THE EMPLOYEE AND STATE, TO PROVIDE A STATUTE OF LIMITATIONS, TO PROVIDE THAT AN ACTION BROUGHT UNDER THE ACT MAY BE BROUGHT AS A CLASS ACTION, AND TO LIMIT AUTHORITY OF THE DEPARTMENT WITH RESPECT TO IMPLEMENTING THE ACT; TO AMEND SECTION 6‑1‑130, RELATING TO THE SCOPE OF AUTHORITY OF A POLITICAL SUBDIVISION OF THE STATE TO SET A MINIMUM WAGE RATE, TO AMEND SECTION 44‑22‑160, RELATING TO COMPENSATION OF MENTAL HEALTH PATIENTS FOR THERAPEUTIC EMPLOYMENT, TO AMEND SECTION 53‑1‑100, RELATING TO COMPENSATION FOR SUNDAY WORK BY MACHINE SHOP EMPLOYEES, AND TO AMEND SECTION 53‑1‑110, RELATING TO COMPENSATION FOR SUNDAY WORK BY A PERSON EMPLOYED IN THE MANUFACTURE OR FINISHING OF TEXTILE PRODUCTS, ALL SO AS TO MAKE CONFORMING CHANGES; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 10, TITLE 41 AS ARTICLE 1 ENTITLED “PAYMENT OF WAGES GENERALLY”.

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

SECTION 1. Chapter 10, Title 41 of the 1976 Code is amended by adding:

“Article 3

South Carolina Minimum Wage Act

Section 41‑10‑210. This article must be known and may be cited as the ‘South Carolina Minimum Wage Act’.

Section 41‑10‑220. The purpose of this article is to provide measures appropriate for the implementation of Section 16, Article XVII of the South Carolina Constitution, 1895, pursuant to authority granted to the General Assembly by Section 16, Article XVII of the South Carolina Constitution, 1895. The Department of Employment and Workforce is designated as the state agency to implement Section 16, Article XVII of the South Carolina Constitution, 1895.

Section 41‑10‑230. Employers shall at a minimum pay employees a wage at an hourly rate of one dollar above the federal minimum wage for all hours worked in this State. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive this state minimum wage. The provisions of Sections 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the United States Secretary of Labor, are incorporated herein.

Section 41‑10‑240. (A) Beginning on the first September thirtieth after ratification of Section 16, Article XVII of the South Carolina Constitution, 1895, the department shall calculate an adjusted state minimum wage rate by increasing the state minimum wage from being at least one dollar above the federal minimum wage by the rate of inflation for the twelve months prior to July first. In calculating the adjusted state minimum wage, the department shall use the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. Each adjusted state minimum wage rate shall take effect on the following January first, with the initial adjusted minimum wage rate to take effect on January first following the first September after the ratification of Section 16, Article XVII of the South Carolina Constitution, 1895.

(B) The department annually shall publish the amount of the adjusted state minimum wage and the effective date by posting the adjusted state minimum wage rate and the effective date on the Internet website of the department before October fifteenth of each year. To the extent funded in the annual general appropriations act, the department annually shall provide written notice of the adjusted rate and the effective date of the adjusted state minimum wage to all employers by November fifteenth.

Section 41‑10‑250. It is unlawful for an employer or another party to discriminate or take adverse action against a person in retaliation for exercising rights protected pursuant to Section 16, Article XVII of the South Carolina Constitution, 1895. Rights protected include, but are not limited to, the right to file a complaint or inform any person of his potential rights pursuant to Section 16, Article XVII of the South Carolina Constitution, 1895, and to assist him in asserting these rights.

Section 41‑10‑260. (A) A person aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against an employer for violating a provision of this article after notifying the employer alleged to have violated this article, in writing, of an intent to initiate the action. The notice must identify the minimum wage to which the person aggrieved claims entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid wages through the date of the notice.

(B) The employer has fifteen calendar days after receipt of the notice to pay the total amount of unpaid wages or otherwise resolve the claim to the satisfaction of the person aggrieved. The statute of limitations for bringing an action pursuant to this article are tolled during this fifteen‑day period. If the employer fails to pay the total amount of unpaid wages or otherwise resolve the claim to the satisfaction of the person aggrieved, then the person aggrieved may bring a claim for unpaid minimum wages, the terms of which must be consistent with the contents of the notice.

(C)(1) Upon prevailing in an action brought pursuant to this article, aggrieved persons shall recover the full amount of any unpaid back wages unlawfully withheld plus the same amount as liquidated damages and must be awarded reasonable attorney’s fees and costs. As provided under the federal Fair Labor Standards Act, pursuant to Section 11 of the Portal‑to‑Portal Act of 1947, 29 U.S.C. 260, if the employer proves by a preponderance of the evidence that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that his or her act or omission was not a violation of Section 16, Article XVII of the South Carolina Constitution, 1895, the court may, in its sound discretion, award no liquidated damages or award any amount not to exceed an amount equal to the amount of unpaid minimum wages. The court shall not award any economic damages on a claim for unpaid minimum wages not expressly authorized in this article.

(2) Upon prevailing in an action brought pursuant to this article, an aggrieved person is also entitled to legal or equitable relief as appropriate to remedy the violation, including, without limitation, reinstatement in employment and injunctive relief. However, any entitlement to legal or equitable relief in an action brought under Section 16, Article XVII of the South Carolina Constitution, 1895, shall not include punitive damages.

Section 41‑10‑270. The Attorney General may bring a civil action to enforce this article, and this action may:

(1) seek injunctive relief;

(2) impose a fine of one thousand dollars for each violation, payable to the department. The department shall remit these funds to the state general fund; or

(3) both.

Section 41‑10‑280. The statute of limitations for an action brought pursuant to this article is for five years and begins on the date on which the alleged violation occurred.

Section 41‑10‑290. An action brought pursuant to this article may be brought as a class action under state law.

Section 41‑10‑300. Except for calculating the adjusted state minimum wage and publishing the initial state minimum wage and any annual adjustments to it, the authority of the department in implementing Section 16, Article XVII of the South Carolina Constitution, 1895, pursuant to this article is limited to that authority expressly granted by the General Assembly.”

SECTION 2. Section 6‑1‑130(B) of the 1976 Code is amended to read:

“(B) A political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate that exceeds the ~~federal~~ state minimum wage rate set forth in ~~Section 6 of~~ the ~~Fair Labor Standards Act of 1938, 29 U.S.C. 206~~ South Carolina Minimum Wage Act pursuant to Article 3, Chapter 10, Title 41. Also, a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate related to employee wages that are exempt under 29 U.S.C. 201 et seq., the Fair Labor Standards Act of 1938.”

SECTION 3. Section 44‑22‑160(A) of the 1976 Code is amended to read:

“(A) ~~Each~~ A patient may refuse nontherapeutic employment within the facility. The department shall establish policies and guidelines to determine what constitutes therapeutic employment. The record and justification of ~~each~~ a patient’s employment must be sent immediately to the attending physician for review and entered into the patient’s record. Patient employment must be compensated in accordance with the Fair Labor Standards Act, except that the employee may receive no less than the state minimum wage provisions of the South Carolina Minimum Wage Act pursuant to Article 3, Chapter 10, Title 41.”

SECTION 4. Section 53‑1‑100 of the 1976 Code is amended to read:

“Section 53‑1‑100. Notwithstanding ~~any other~~ another provision of law, the operation of machine shops and rubber molding and plastic injection molding facilities ~~shall~~ must be exempt from the provisions of this chapter. ~~No~~ A person ~~shall~~ may not be required to work on Sunday ~~who~~ if he is conscientiously opposed to Sunday work. If ~~any~~ a person refuses to work on Sunday because of conscientious or physical objections, he ~~shall~~ does not jeopardize his seniority rights by ~~such~~ the refusal ~~or~~ and may not be discriminated against in any manner. Sunday work ~~shall~~ must be compensated at a rate no less than that required by the ~~Fair Labor Standards Act~~ South Carolina Minimum Wage Act pursuant to Article 3, Chapter 10, Title 41.”

SECTION 5. Section 53‑1‑110 of the 1976 Code is amended to read:

“Section 53‑1‑110. Notwithstanding ~~any other~~ another provision of law, the manufacture and finishing of textile products ~~shall be~~ is exempt from the provisions of Chapter 1, Title 53~~, as amended~~. Provided, however, that ~~no~~ a person ~~shall~~ may not be required to work on Sunday ~~who~~ if he is conscientiously opposed to Sunday work. If ~~any~~ a person refuses to work on Sunday because of conscientious or physical objections, he ~~shall~~ does not jeopardize his seniority rights by ~~such~~ the refusal ~~or~~ and may not be discriminated against in any manner. Sunday work ~~shall~~ must be compensated at a rate no less than that required by the ~~Fair Labor Standards Act~~ South Carolina Minimum Wage Act pursuant to Article 3, Chapter 10, Title 41.”

SECTION 6. Sections 41‑10‑10 through 41‑10‑110 of the 1976 Code are designated as Article 1, Chapter 10, Title 41 entitled “Payment of Wages Generally”. The Code Commissioner is directed to change references from “chapter” to “article” as appropriate to reflect the designated provisions.

SECTION 7. 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 8. The provisions of this act take effect upon approval by the Governor and are contingent on the ratification of a constitutional amendment to Section 16, Article XVII of the South Carolina Constitution, 1895, providing for a mandatory minimum wage in South Carolina.

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