**South Carolina General Assembly**

122nd Session, 2017-2018

**S. 361**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Kimpson

Document Path: l:\s-res\mek\011earn.sp.mek.docx

Introduced in the Senate on February 7, 2017

Currently residing in the Senate Committee on **Labor, Commerce and Industry**

Summary: Earned Paid Sick Leave Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/7/2017 Senate Introduced and read first time ([Senate Journal‑page 4](file:///h:\sj\20170207.docx))

2/7/2017 Senate Referred to Committee on **Labor, Commerce and Industry** ([Senate Journal‑page 4](file:///h:\sj\20170207.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=361&session=122&summary=B) at the website

**VERSIONS OF THIS BILL**

[2/7/2017](file:///p:\pprever\2017-18\361_20170207.docx)

**A** **BILL**

TO AMEND TITLE 41 OF THE 1976 CODE, RELATING TO LABOR AND EMPLOYMENT, TO ENACT THE EARNED PAID SICK LEAVE ACT, TO PROVIDE THAT EMPLOYEES SHALL ACCRUE EARNED PAID AND EARNED UNPAID SICK LEAVE; TO PROVIDE FOR THE METHOD OF AND LIMITS OF ACCRUAL; TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH AN EMPLOYEE MAY USE EARNED PAID OR EARNED UNPAID SICK LEAVE; TO PROVIDE FOR CERTIFICATION OF THE REASONS FOR WHICH EARNED PAID OR EARNED UNPAID SICK LEAVE IS USED; TO PROVIDE THAT AN EMPLOYER CANNOT HINDER AN EMPLOYEE’S USE OF EARNED PAID OR EARNED UNPAID SICK LEAVE; TO PROVIDE THAT EMPLOYERS MAY NOT PENALIZE A PERSON FOR PROPERLY USING EARNED PAID OR EARNED UNPAID SICK LEAVE; TO PROVIDE THAT EMPLOYERS WHO ALREADY HAVE POLICIES THAT EXCEED THE PROVISIONS OF THIS CHAPTER DO NOT HAVE TO CHANGE THOSE POLICIES; TO PROVIDE THAT EMPLOYEES MUST PROVIDE REASONABLE NOTICE TO EMPLOYERS BEFORE USING EARNED PAID OR EARNED UNPAID SICK LEAVE IF POSSIBLE; TO PROVIDE FOR NOTICE OF THE PROVISIONS OF THIS CHAPTER TO EMPLOYERS AND EMPLOYEES; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. This act shall be referred to and may be cited as the “Earned Paid Sick Leave Act.”

SECTION 2. Title 41 of the 1976 Code is amended by adding:

“Chapter 47

Earned Paid Sick Leave

Section 41‑47‑10. For the purposes of this chapter:

(1) ‘Agricultural labor’ shall have the same meaning as provided in Section 41‑27‑120.

(2) ‘Child’ means a person under the age of eighteen.

(3) ‘Earned paid sick time’ means the time that is provided by an employer to an employee as computed under Section 41‑47‑20 and is compensated at the same hourly rate as the employee earns from the employee’s employment at the time the employee uses the paid sick leave, provided, however, that this hourly rate shall not be less than the federal minimum wage.

(4) ‘Earned sick leave’ means the time that is provided by an employer to an employee as computed in Section 41‑47‑40 that can be used for the purposes provided in Section 41‑47‑30.

(5) ‘Earned unpaid sick leave’ means the time that is provided by an employer to an employee as computed in Section 41‑47‑40 that can be used for the purposes provided in Section 41‑47‑40.

(6) ‘Employee’ shall have the same meaning as provided in Section 41‑1‑65(2).

(7) ‘Employer’ shall have the same meaning as provided in Section 41‑1‑65(1).

(8) ‘Federal act’ means the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as may be amended.

(9) ‘Health care provider’ has the same meaning as provided in regulations promulgated pursuant to the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as may be amended.

(10) ‘Parent’ means a biological, adoptive, foster parent, step parent of an employee, an employee’s spouse, or another person who stood in loco parentis during the childhood of an employee or employee’s spouse.

(11) ‘Seasonal employer’ means an employer that, because of climatic conditions or the nature of the product or service, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period of less than sixteen weeks for all seasonal periods during a calendar year.

(12) ‘Seasonal employment’ means services performed for wages for a seasonal employer during the seasonal period in the employers seasonal operations.

(13) ‘Seasonal employee’ means any employee who is employed by a seasonal employer in seasonal employment.

(14) ‘Spouse’ shall have the same meaning as provided by the marriage laws of this State.

Section 41‑47‑20. All employees who work in this State who must be absent from work for the reasons provided in Section 41‑47‑30 shall be entitled to not less than the hours of earned paid sick leave and earned unpaid sick leave provided in Section 41‑47‑40 during a calendar year, except for seasonal employees and individuals engaged in agricultural labor, who shall be entitled to earned paid sick leave pursuant to this section at the discretion of the employer.

Section 41‑47‑30. Earned paid sick leave and unearned paid sick leave shall be provided to an employee by an employer for:

(1) the care for the employee’s child or spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care, or who is suffering from a condition covered under the federal act;

(2) the care for the employee’s own physical or mental illness, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care, or that is a condition covered under the federal act;

(3) an employee to attend the employee’s routine medical appointment or a routine medical appointment of the employee’s child or spouse;

(4) matters related to a public health emergency; and

(5) an employee to address the psychological or physical effects of criminal domestic violence arising under Chapter 25, Title 16.

Section 41‑47‑40. (A) Earned sick leave shall accrue at a rate of one hour for every forty hours worked beginning with the date of hire.

(B) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the Federal Fair Labor Standards Act will be deemed to work forty hours each work week for the purposes of earned paid sick leave accrual unless their normal work week is less than forty hours, in which case earned paid sick leave accrues based on that normal work week.

(C) Employees shall not accrue more than fifty‑six hours of earned sick leave in a calendar year, unless the employer allows a higher limit.

(D) During a calendar year, employers with:

(1) more than ten employees are not required to provide more than fifty‑six hours of earned paid sick leave;

(2) six to ten employees shall not be required to provide more than forty hours of earned paid sick time to their employees; and

(3) fewer than six employees shall be required to provide a minimum of forty hours of earned unpaid sick leave to their employees.

(E)(1) Earned sick leave may be used as accrued, or be loaned by the employer, at its discretion, to the employee in advance of actual accrual, provided that an employer shall not require an employee to reimburse the employer for any unearned sick leave loaned by the employer.

(2) Accrued earned sick leave shall be used in the smaller of hourly increments of the smallest increment that the employer’s payroll system uses to account for absences or use of other time.

(3) Earned paid sick leave and earned unpaid sick leave shall carry over annually to the extent not used by the employee, however an employer shall not be required to allow use of earned paid sick leave and earned unpaid sick leave in a single calendar year that exceeds the maximum benefit they are required to provide pursuant to this section.

(4) Employers shall not be required to pay‑out unused earned paid sick leave upon the separation of the employee from the employer.

Section 41‑47‑50. If an employee is absent from work for any reason listed in Section 41‑47‑30, and by mutual consent of the employer and employee, the employee works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in Section 41‑47‑30, the employee shall not be required to use earned paid sick leave accrued or earned unpaid sick leave for the employee’s absence during that time period and the employer shall not be required to pay for sick leave taken during that time period. However, the employer cannot require the employee to work additional shifts or hours, or require, as a condition of an employee’s taking earned paid sick leave or earned unpaid sick leave, that the employee find, or attempt to find, a replacement employee to cover the hours during which the employee is utilizing earned or unearned sick leave.

Section 41‑47‑60. (A) Subject to the provisions contained in Section 41‑47‑140, an employer may require certification of the qualifying illness, injury or health condition. Any reasonable documentation signed by a health care provider involved in following or treating the illness, injury or health condition, and indicating the need for the amount of sick time taken, shall be deemed acceptable certification.

(B) Nothing in this section requires an employee to provide as certification any information from a health care provider that would be in violation of Section 1177 of the Social Security Act, 42 U.S.C. 1320d‑6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d‑2.

Section 41‑47‑70. When the use of earned sick leave is foreseeable, the employee shall make a good faith effort to provide notice of this need to the employer in advance of the use of the sick leave.

Section 41‑47‑80. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or attempt to exercise, any right provided under, or in connection with this chapter, including, but not limited to, using the taking of earned sick leave as a negative factor in an employment action such as hiring, evaluation, promotion, disciplinary action, termination, or counting earned sick time under a no‑fault attendance policy.

Section 41‑47‑90. It shall be unlawful for any employer to take any adverse action against an employee because the employee opposes practices which the employee reasonably believes to be in violation of this chapter, or supports the exercise of right of another under this chapter.

Section 41‑47‑100. Nothing in this chapter shall be construed to discourage employers from adopting or retaining paid sick leave policies more generous than policies that comply with the requirements of this chapter and nothing in this chapter shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit plan or plan that provides to employees greater paid sick leave rights than the rights established under this chapter.

Section 41‑47‑110. Employers who provide their employees with paid time off, vacation, or other paid leave policies who make available an amount of paid time off sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as paid sick leave under this section are not required to provide additional paid sick leave.

Section 41‑47‑120. The Department of Employment and Workforce may promulgate regulations necessary to carry out the provisions of this chapter.

Section 41‑47‑130. The Department of Employment and Workforce shall produce notice of the provisions of this chapter for each employer in the State. The notice must be posted in a conspicuous place accessible to employees in every establishment where employees with rights under this chapter work. Employers shall also provide each employee with a copy of the notice that is to be posted. The notice shall contain:

(1) information describing the rights to earned paid sick leave and earned unpaid sick leave under this chapter;

(2) information about the notices, documentation, and any other requirements placed on employees in order to exercise their rights to earned paid sick leave and earned unpaid sick leave;

(3) information that describes the protections that an employee has in exercising his rights under this chapter;

(4) the name, address, and phone number of the Department of Employment and Workforce’s office where questions about the rights and responsibilities under this chapter can be answered; and

(5) information about filing a complaint with the Department of Employment and Workforce.”

SECTION 3. This act takes effect January 1, 2018.

‑‑‑‑XX‑‑‑‑