~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 24, 2012

**H. 4652**

Introduced by Reps. Sandifer, Harrell, Lucas, Bingham, Hardwick, Harrison, Owens, White, Allison, Atwater, Bales, Ballentine, Bannister, Barfield, Bedingfield, Bikas, Bowen, Brady, Brannon, Chumley, Clemmons, Cole, Corbin, Crawford, Crosby, Daning, Delleney, Edge, Erickson, Forrester, Frye, Gambrell, Hamilton, Hearn, Henderson, Herbkersman, Hiott, Hixon, Horne, Huggins, Limehouse, Loftis, Long, Lowe, McCoy, Merrill, D.C. Moss, V.S. Moss, Murphy, Nanney, Norman, Parker, Patrick, Pinson, Pitts, Pope, Putnam, Quinn, Ryan, Simrill, Skelton, G.M. Smith, G.R. Smith, J.R. Smith, Sottile, Southard, Spires, Stringer, Tallon, Taylor, Thayer, Toole, Tribble, Viers, Whitmire, Willis, Young, Battle, Hayes and Anthony

S. Printed 5/24/12--S. [SEC 5/25/12 2:28 PM]

Read the first time February 9, 2012.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4652) to amend the Code of Laws of South Carolina, 1976, by adding Section 41‑7‑110 so as to provide an employer must conspicuously post certain notice concerning the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting the following:

/ A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY AMENDING SECTION 41‑7‑10, RELATING TO PUBLIC POLICY CONCERNING THE RIGHT TO WORK, SO AS TO PROVIDE CERTAIN DEFINITIONS AND TO LIMIT APPLICABILITY OF THOSE DEFINITIONS; TO AMEND SECTION 41‑7‑80, RELATING TO PENALTIES FOR A VIOLATION OF RIGHT TO WORK LAWS, SO AS TO PROVIDE A RANGE FOR AN APPLICABLE FINE FROM ONE THOUSAND DOLLARS TO A MAXIMUM OF TEN THOUSAND DOLLARS; TO AMEND SECTION 41‑7‑90, RELATING TO COURT REMEDIES AVAILABLE TO A PERSON FOR A VIOLATION OF HIS RIGHT TO WORK, SO AS TO PERMIT TREBLE DAMAGES, REQUIRE A PERSON SEEKING THIS RELIEF TO CONTEMPORANEOUSLY PROVIDE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION WITH THE BASIS FOR THE LAWSUIT, AND PROVIDE AN EXCEPTION; TO AMEND SECTION 41‑7‑100, RELATING TO CIVIL PENALTIES THE DEPARTMENT MAY ASSESS FOR A VIOLATION AND RELATED APPEALS, SO AS TO PROVIDE A CIVIL PENALTY MAY NOT EXCEED TEN THOUSAND DOLLARS; TO ADD SECTION 41‑7‑110 SO AS TO PROVIDE AN EMPLOYER OR AN EMPLOYEE WITH PERMISSION MAY CONSPICUOUSLY POST CERTAIN NOTICE CONCERNING THE RIGHTS OF AN EMPLOYEE; AND TO ADD SECTION 41-7-130 REQUIRING CERTAIN REPORTS TO BE FILED WITH THE DEPARTMENT OF LABOR, LICENSING AND REGULATION.

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

SECTION 1. Section 41‑7‑10 of the 1976 Code is amended to read:

“Section 41‑7‑10. It is hereby declared to be the public policy of this State that the right of persons to work ~~shall~~ must not be denied or abridged ~~on account~~ because of membership or nonmembership in ~~any~~ a labor union or labor organization.”

SECTION 2. Section 41‑7‑80 of the 1976 Code is amended to read:

“Section 41‑7‑80.~~Any~~ An employer, labor organization, or other person ~~whomsoever~~ who ~~shall violate any~~ violates a provision of this chapter ~~shall be~~ is guilty of a misdemeanor, and, upon conviction ~~thereof in any court of competent jurisdiction, shall~~, must be punished by imprisonment for not less than ten days nor more than thirty days ~~or by~~, a fine of not less than ~~ten nor more than~~ one thousand dollars but not more than ten thousand dollars, or ~~by~~ both ~~in the discretion of the court~~.”

SECTION 3. Section 41‑7‑90 of the 1976 Code is amended to read:

“Section 41‑7‑90.(A) ~~Any~~ A person whose rights are adversely affected by ~~any~~ contract, agreement, assemblage, or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter ~~shall have the right to~~ may apply to ~~any~~ a court having general equity jurisdiction for appropriate relief. The court~~, in any such proceeding,~~ may grant and issue ~~such~~ a restraining~~,~~ and other~~,~~ appropriate orders ~~as may be appropriate,~~ including an injunction restraining and enjoining the performance, continuance, maintenance, or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, ~~any~~ actual damages, costs, and attorneys’ fees ~~which have been~~ sustained or incurred by ~~any~~ a party to the action, and, in the discretion of the court or jury, treble damages and punitive damages in addition to the actual damages. The provisions of this section are cumulative and are in addition to all other remedies ~~now or hereafter~~ provided by law.

(B) Contemporaneously with the filing of an action in court, a person applying for relief pursuant to this section must file, with the director or his designee, a copy of the court pleadings, or an affidavit with the director stating the legal and factual basis for each claim and application for relief based on the available evidence at the time of the filing of the affidavit.

(C) The contemporaneous filing requirement of subsection (B) does not apply to a case in which the period of limitation may expire, or there is a good faith basis to believe it may expire on a claim stated in the complaint within ten days of the date of filing and, because of the time constraints, the plaintiff asserts that an affidavit could not be prepared, or a copy of the pleadings could not be provided. In such a case, the plaintiff has forty-five days after the filing of the court action to file a copy of the pleadings or an affidavit with the director.”

SECTION 4. Section 41‑7‑100 of the 1976 Code, as added by Act 357 of 2002, is amended to read:

“Section 41‑7‑100. (A) ~~A~~ An employer, labor organization, or other person who violates the provisions of this chapter may be assessed by the Director of the Department of Labor, Licensing and Regulation a civil penalty of not more than ~~one hundred~~ ten thousand dollars for each offense.

(B) The director shall promulgate regulations establishing procedures for administrative review of civil penalties assessed under this chapter.

(C) ~~A~~ An employer, labor organization, or other person aggrieved by a final action of the department may appeal the decision to the Administrative Law ~~Judge Division~~ Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law ~~Judge Division~~ Court. Service of a petition requesting a review does not stay the department’s decision pending completion of the appellate process.”

SECTION 5. Chapter 7, Title 41 of the 1976 Code is amended by adding:

“Section 41‑7‑110. An employer, or a single employee of that employer with the permission of the employer, may post in a conspicuous place a notice containing the provisions of Sections 41‑7‑10, 41‑7‑20, 41‑7‑30, 41‑7‑40, 41‑7‑70, and 41‑7‑90 printed in at least fourteen point font. This notice must bear a title reading ‘Your Rights as a Worker in South Carolina’ in at least forty‑eight point font. The director or his designee shall furnish the printed form of this notice upon request or make it available electronically on the department’s website.”

SECTION 6. Chapter 7, Title 41 of the 1976 Code is amended by adding:

“Section 41-7-130. A labor organization with members that work in South Carolina shall file with the department contemporaneously copies of the documents required to be filed with the Secretary of Labor, pursuant to 29 U.S.C. §§ 400 et seq,as amended.”

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. This act takes effect upon approval by the Governor, and the provisions of Section 41-7-90, as amended, shall apply to any actions filed with a court after the effective date./

Renumber sections to conform.

Amend title to conform.

W. GREG RYBERG for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑7‑110 SO AS TO PROVIDE AN EMPLOYER MUST CONSPICUOUSLY POST CERTAIN NOTICE CONCERNING THE RIGHTS OF AN EMPLOYEE; BY ADDING SECTION 41‑7‑120 SO AS TO PROVIDE CERTAIN DEFINITIONS AND PROHIBITIONS CONCERNING GOVERNMENT CONTRACTS; BY ADDING SECTION 41‑7‑130 SO AS TO REQUIRE A LABOR ORGANIZATION TO FILE CERTAIN INFORMATION WITH THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO AMEND SECTION 41‑7‑10, RELATING TO PUBLIC POLICY CONCERNING THE RIGHT TO WORK, SO AS TO PROVIDE CERTAIN DEFINITIONS AND TO LIMIT APPLICABILITY OF THOSE DEFINITIONS; TO AMEND SECTION 41‑7‑40, AS AMENDED, RELATING TO THE DEDUCTION OF LABOR ORGANIZATION MEMBERSHIP DUES FROM EMPLOYEE WAGES, SO AS TO PROVIDE AN EMPLOYEE MUST AUTHORIZE THIS DEDUCTION IN A CERTAIN MANNER, AND TO CLARIFY THAT OTHERWISE LEGAL POLITICAL CONTRIBUTIONS ARE NOT PROHIBITED; TO AMEND SECTION 41‑7‑80, RELATING TO PENALTIES FOR A VIOLATION OF RIGHT TO WORK LAWS, SO AS TO LIMIT THE APPLICABLE FINE TO A MAXIMUM OF TEN THOUSAND DOLLARS; TO AMEND SECTION 41‑7‑90, RELATING TO REMEDIES AVAILABLE TO A WORKER FOR A VIOLATION OF HIS RIGHT TO WORK, SO AS TO PERMIT TREBLE DAMAGES, REQUIRE A PERSON SEEKING THIS RELIEF TO DEMONSTRATE A FACTUAL BASIS FOR A CLAIM IN A CERTAIN MANNER, AND PROVIDE AN EXCEPTION; AND TO AMEND SECTION 41‑7‑100, RELATING TO CIVIL PENALTIES THE DEPARTMENT MAY ASSESS FOR A VIOLATION AND RELATED APPEALS, SO AS TO PROVIDE A CIVIL PENALTY MAY NOT EXCEED TEN THOUSAND DOLLARS.

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

SECTION 1. Chapter 7, Title 41 of the 1976 Code is amended by adding:

“Section 41‑7‑110. An employer, or a single employee of that employer, may post in a conspicuous place a notice containing the provisions of Sections 41‑7‑10, 41‑7‑20, 41‑7‑30, 41‑7‑40, 41‑7‑70, and 41‑7‑90 printed in at least fourteen point font. This notice must bear a title reading ‘Your Rights as a Worker in South Carolina’ in at least forty‑eight point font. The director or his designee shall furnish the printed form of this notice upon request or make it available electronically on the department’s website.”

SECTION 2. Chapter 7, Title 41 of the 1976 Code is amended by adding:

“Section 41‑7‑120. (A) For purposes of this section:

(1) ‘Facility’ means any actual physical improvement to real property owned or leased directly or through a building authority or by a governmental unit. These physical improvements include, but are not limited to, a road, bridge, runway, rail, and building or structure along with the grounds, approaches, services, and appurtenances of the building or grounds.

(2) ‘Governmental unit’ means this state, a county, a city, a township, a village, a school district, an intermediate school district, a community college, or a public college or university that receives appropriations from this State, or any agency, board, commission, authority, or instrumentality of the foregoing.

(B) A governmental unit awarding any construction contract or expending funds pursuant to the contract shall ensure that neither the awarding governmental unit nor any construction manager acting on behalf of the awarding governmental unit may in its bid specifications, project agreements, or other controlling documents include a term:

(1) requiring, prohibiting, encouraging, or discouraging a bidder, contractor, or subcontractor from entering into or adhering to an agreement relating to the construction project or other related construction projects with a collective bargaining organization; or

(2) discriminating against a bidder, contractor, or subcontractor based on the status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or another related construction project.

(C) A governmental unit shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in subsections (B)(1) or (B)(2) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

(D) A governmental unit or a construction manager or other contracting entity acting on behalf of a governmental unit shall not place any of the terms described in subsection (B) in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a facility. Any such included term is void and of no effect.

(E) This section does not prohibit an employer or other party from entering into an agreement or engaging in another activity protected by the National Labor Relations Act, 29 U.S.C. 151 to 169, and does not interfere with labor relations of parties that are protected under the National Labor Relations Act, 29 U.S.C. 151 to 169.

(F) This section does not prohibit a governmental unit from awarding a public contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a collective bargaining organization, if being or becoming a party or adhering to an agreement with a collective bargaining organization is not a condition for award of the grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that public contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a collective bargaining organization.”

SECTION 3. Chapter 7, Title 41 of the 1976 Code is amended by adding:

“Section 41‑7‑130. (A)(1) A labor organization shall adopt a constitution and bylaws and shall file a copy of them with the department, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information:

(a) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this subsection;

(b) the name and title of each of its officers;

(c) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;

(d) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization;

(e) the number of members of the reporting labor organization working in South Carolina; and

(f) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provisions made and procedures followed with respect to each of the following:

(i) qualifications for or restrictions on membership;

(ii) levying of assessments;

(iii) participation in insurance or other benefit plans;

(iv) authorization for disbursement of funds of the labor organization;

(v) audit of financial transactions of the labor organization;

(vi) the calling of regular and special meetings;

(vii) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations’ representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected;

(viii) discipline or removal of officers or agents for breaches of their trust;

(ix) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures;

(x) authorization for bargaining demands;

(xi) ratification of contract terms;

(xii) authorization for strikes; and

(xii) issuance of work permits.

(2) A change in the information required by this subsection must be reported to the department at the time the reporting labor organization files with the department the annual financial report required by subsection (B) of this section.

(B) A labor organization shall file annually with the department a financial report signed by its president and treasurer or corresponding principal officers containing the following information accurately, in detail as needed, to disclose its financial condition and operations for its preceding fiscal year:

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources of them;

(3) salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and also to each employee who, during such fiscal year, received more than ten thousand dollars in the aggregate from this labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than two hundred fifty dollars during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes of them.

(C) A labor organization required to submit a report under this section shall make information required in the report available to all of its members. This labor organization and its officers are under a duty enforceable at the application of any member of the organization to the circuit court to permit the member with just cause to examine any books, records, and accounts necessary to verify such report. The court in this action may, in its discretion, allow a reasonable attorney’s fee to be paid by the defendant, and costs of the action, in addition to any judgment awarded to the plaintiff.”

SECTION 4. Section 41‑7‑10 of the 1976 Code is amended to read:

“Section 41‑7‑10. It is hereby declared to be the public policy of this State that the right of persons to work ~~shall~~ must not be denied or abridged ~~on account~~ because of membership or nonmembership in ~~any~~ a labor union or labor organization.”

SECTION 5. Section 41‑7‑40 of the 1976 Code, as last amended by Act 357 of 2002, is further amended to read:

“Section 41‑7‑40. ~~Nothing in this chapter precludes an employer from deducting from the wages of the employees and paying over to a labor organization, or its authorized representative, membership dues in a labor organization; however, the employer must have received from each employee, on whose account the deductions are made, a written assignment which must not be irrevocable for a period of more than one year or until the termination date of any applicable collective agreement or assignment, whichever occurs sooner. After one year, the employee has the absolute right to revoke the written assignment allowing for deduction of membership dues in a labor union~~

(A) It is unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written or electronic authorization for the deductions, which authorization may be revoked by the employee at any time by giving written or electronic notice of the revocation to the employer.

(B) Nothing in this chapter shall prohibit an employee from personally making political contributions as defined in Chapter 13, Title 8, provided the contributions are not otherwise prohibited by law.”

SECTION 6. Section 41‑7‑80 of the 1976 Code is amended to read:

“Section 41‑7‑80. ~~Any~~ An employer, labor organization or other person ~~whomsoever~~ who ~~shall violate any~~ violates a provision of this chapter ~~shall be~~ is guilty of a misdemeanor~~,~~ and, upon conviction ~~thereof in any court of competent jurisdiction, shall~~, must be punished by imprisonment for not less than ten nor more than thirty days ~~or by~~, a fine of not less than ~~ten nor more than~~ one thousand dollars but not more than ten thousand dollars, or ~~by~~ both ~~in the discretion of the court~~.”

SECTION 7. Section 41‑7‑90 of the 1976 Code is amended to read:

“Section 41‑7‑90.(A) ~~Any~~ A person whose rights are adversely affected by ~~any~~ contract, agreement, assemblage, or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter ~~shall have the right to~~ may apply to ~~any~~ a court having general equity jurisdiction for appropriate relief. The court~~, in any such proceeding,~~ may grant and issue ~~such~~ a restraining~~,~~ and other~~,~~ appropriate orders ~~as may be appropriate,~~ including an injunction restraining and enjoining the performance, continuance, maintenance or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, ~~any~~ actual damages, costs, and attorneys’ fees ~~which have been~~ sustained or incurred by ~~any~~ a party to the action, and, in the discretion of the court or jury, treble damages and punitive damages in addition to the actual damages. The provisions of this section are cumulative and are in addition to all other remedies ~~now or hereafter~~ provided by law.

(B) A person applying for relief pursuant to this section must contemporaneously file an affidavit with the director stating the legal and factual basis for each claim and application for relief based on the available evidence at the time of the filing of the affidavit.

(C) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit could not be prepared. In such a case, the plaintiff has forty‑five days after the filing of the complaint to file the affidavit with the director.”

SECTION 8. Section 41‑7‑100 of the 1976 Code, as added by Act 357 of 2002, is amended to read:

“Section 41‑7‑100. (A) ~~A~~ An employer, labor organization, or other person who violates the provisions of this chapter may be assessed by the Director of the Department of Labor, Licensing and Regulation a civil penalty of not more than ~~one hundred~~ ten thousand dollars for each offense.

(B) The director shall promulgate regulations establishing procedures for administrative review of civil penalties assessed under this chapter.

(C) ~~A~~ An employer, labor organization, or other person aggrieved by a final action of the department may appeal the decision to the Administrative Law ~~Judge Division~~ Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law ~~Judge Division~~ Court. Service of a petition requesting a review does not stay the department’s decision pending completion of the appellate process.”

SECTION 9. 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 10. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑