**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA WAGE ASSIGNMENT ACT” BY ADDING ARTICLE 3 TO CHAPTER 10, TITLE 41 SO AS TO PROVIDE SPECIFIC PROCEDURES FOR THE ASSIGNMENT OF WAGES EARNED OR TO BE EARNED BY AN EMPLOYEE TO SECURE A DEBT, TO PROVIDE DEFENSES TO A DEMAND FOR A WAGE ASSIGNMENT, TO PROVIDE PENALTIES FOR CERTAIN VIOLATIONS, TO PROVIDE AN EMPLOYER MAY NOT DISCHARGE OR SUSPEND AN EMPLOYEE BECAUSE HIS EARNINGS HAVE BEEN SUBJECTED TO WAGE DEMANDS, AND TO PROVIDE EXEMPTIONS; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 10, TITLE 41 AS ARTICLE 1 ENTITLED “GENERAL PROVISIONS”.

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 Wage Assignment Act

Section 41‑10‑310. This act must be known and may be cited as the ‘South Carolina Wage Assignment Act’.

Section 41‑10‑320. No assignment of wages earned or to be earned is valid unless:

(1) made in a written instrument:

(a) signed by the wage‑earner in person;

(b) bearing the date of its execution and the:

(i) social security number of the wage‑earner;

(ii) name of the employer of the wage‑earner at the time of its execution;

(iii) amount of the money loaned or the price of the articles sold or other consideration given including, but not limited to, services rendered; and

(iv) rate of interest or time‑price differential, if any, to be paid, and the date when such payments are due; and

(c) bearing the words ‘Wage Assignment’ printed or written in bold face letters of not less than one‑fourth inch in height:

(i) at the head of the wage assignment and also one inch above or below the line where the wage‑earner signs that assignment on the wage assignment document; and

(ii) in the paragraph contained in the financing document;

(2) the written instrument is given to secure a debt contracted by the wage‑earner simultaneously with its execution;

(3) exact copies of the written instrument are furnished to the wage‑earner at the time the assignment is executed; and

(4) the written instrument is written as a separate instrument complete in itself and also as a part of a conditional sales contract or other instrument.

Section 41‑10‑330. (A) A demand on an employer for the wages of wage‑earner by virtue of a wage assignment may not be served on the employer unless:

(1) there was a default of more than forty days in payment of the indebtedness secured by the assignment and the default has continued to the date of the demand;

(2) the demand contains a correct statement as to the amount of which the wage‑earner is in default and the original or a photostatic copy of the assignment is exhibited to the employer; and

(3) not less than twenty days before serving the demand, a notice of intention to make the demand was served upon the employee, and an advice copy sent to the employer, by registered or certified mail.

(B) Service of a demand without complying with this section is void and has no legal effect.

(C) A demand under this section applies only to wages due at the time of service of the demand and upon subsequent wages until the total amount due under the assignment is paid, or until the expiration of the employer’s payroll period ending immediately prior to eighty‑four days after service of the demand, whichever first occurs.

Section 41‑10‑340. A demand must be in the following form:

‘Demand is hereby made upon an assignment of salary, wages, commissions or other compensation for services, executed by \_\_\_\_\_\_\_\_\_\_\_(Debtor) and delivered to \_\_\_\_\_\_\_\_\_\_\_(Creditor) on \_\_\_\_\_\_\_\_\_\_\_, to secure a debt contracted on \_\_\_\_\_\_\_\_\_\_\_ .

The total amount of the debt is $ \_\_\_\_\_\_\_\_\_\_\_ . Payments in the amount of $ \_\_\_\_\_\_\_\_\_\_\_ have been made. The duration of the contract is \_\_\_\_\_\_\_\_\_\_\_ months. There is now due and owing without acceleration the sum of $ \_\_\_\_\_\_\_\_\_\_\_, the last payment having been made on \_\_\_\_\_\_\_\_\_\_\_.

The employee herein named has been in default in his payments and has been due and owing for more than forty days.

Unless you have received a notice of defense from the employee named in this document within the past twenty days, or receive this notice of defense within five days after the service of this document, you are required by law to make payment in accordance with the assignment. \_\_\_\_\_\_\_\_\_\_\_, first being duly sworn, deposes and says that the facts stated in the demand above are true and correct; and further deposes and says that he, or his principal, if he is an agent for the assignee, has no notice of any defenses of the debtor.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Deponent)(Signature)

Subscribed and sworn to before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

Section 41‑10‑350. The notice to an employee required by Section 41‑10‑330(A)(3) must be in the following form:

‘NOTICE OF INTENT TO ASSIGN WAGES

This notice is required by the South Carolina Wage Assignment Act. The notice has been sent to tell you that a creditor, whose name and address are listed below, plans to have your wages assigned. This notice contains important information. You should read the entire notice carefully.

WHY THE CREDITOR WANTS TO ASSIGN YOUR WAGES

You signed a wage assignment on \_\_\_\_\_\_\_\_\_\_\_. The wage assignment was signed as security if you failed to make payment on the contract you signed on \_\_\_\_\_\_\_\_\_\_\_. A copy of the wage assignment is attached. The creditor’s records show that you have not made a payment since\_\_\_\_\_\_\_\_\_\_\_ and that you now owe $\_\_\_\_\_\_\_\_\_\_\_ on the contract. The creditor will send a demand for wages to your employer twenty days from the date you receive this.

WHAT YOU CAN DO TO PREVENT YOUR WAGES FROM BEING ASSIGNED

If you have a legal defense to the wage assignment you can stop the wage assignment by filling out the enclosed Notice of Defense Form and (1) sending it to the creditor by registered or certified mail, and (2) giving a copy to your employer. You must do these two (2) things within twenty (20) days of receiving this notice. You have the right to contact an attorney concerning the wage assignment. In the event a false defense is made, you will be subject to payment of attorney’s fees, court costs and other expenses. 

The creditor’s name and address are:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)’

Section 41‑10‑360. An assignment of wages may not become invalid by reason of cessation of employment but must continue to be valid and collectible against any future employer of the wage‑earner within a period of two years after the date of its execution.

Section 41‑10‑370. (A)(1) The maximum wages, salary, commissions, and bonuses that may be collected by an assignee for any work week must not exceed the lesser of:

(a) twenty‑five percent of the gross amount of wages, salary, commissions, and bonuses paid for that week; or

(b) the amount by which disposable earnings for a week exceed forty‑five times the federal minimum hourly wage provisions prescribed by the federal minimum wage rate set forth in Section 6 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206. This provision, and no other, applies irrespective of where the compensation was earned or payable and the state where the employee resides.

(2) An amount required by law to be withheld may not be taken from the amount collected by the creditor.

(3) If there is more than one assignment demand received by the employer, the assignees shall collect in the order or priority of service of the demand upon the employer, but the total of all collections must not exceed the amount that could have been collected if there had been one assignment demand.

(4) For the purposes of this article, ‘disposable earnings’ means that part of the earnings of an individual that remain after the deduction from those earnings of any amounts required by law to be withheld.

(B) Benefits and refunds payable by pension or retirement funds or systems, any assets of employees held by those funds or systems, and any money an employee is required to contribute to those funds or systems are exempt and are not subject to a wage assignment under this article.

(C) A fee of five dollars per pay period must be collected by and paid to the employer, and this amount paid must be credited against the amount of the outstanding debt of the wage‑earner. No more than three creditors may collect on any one pay period.

Section 41‑10‑380. (A) Within twenty days after receiving the notice required by Section 41‑10‑330(A)(3) or within five days after service of the demand, the employee may notify his employer, in writing, of any defense he may have to the wage assignment. The employee also must serve a copy of this notice of defense to the creditor by registered or certified mail, and if the employee serves this notice of defense to the creditor before the creditor serves its demand to the employer, the creditor may not serve that demand.

(B) The notice of defense must be by affidavit and in substantially the following form:

‘I, \_\_\_\_\_\_\_\_\_\_\_, hereby (swear) (affirm) that I have a bona fide defense to the claim of \_\_\_\_\_\_\_\_\_\_\_, which claim is based on a debt contracted on \_\_\_\_\_\_\_\_\_\_\_, and for security on which debt a wage assignment was executed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address for service of summons

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Deponent)(Signature)

Subscribed and sworn to before me on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

Section 41‑10‑390. (A) If the employee has not provided notice of defense as provided in Section 41‑10‑380 within twenty days after receiving the notice of intention to make a demand, the creditor may proceed with his demand, and the employer shall commence payment to the creditor not sooner than five business days after service of this demand, unless a notice of defense is received within that five day period. If the employee cures the default stated in the demand, the creditor shall notify the employer and release the demand. An employer may not be liable for payments made in compliance with this section.

(B) If a notice of defense is timely received by an employer, no wages are subject to a demand served by the creditor described in that notice of defense unless the employer receives a copy of a subsequent written agreement between the creditor and employee authorizing these payments. The creditor may not institute further proceedings on the wage assignment if such an agreement is not reached. Service of summons in any subsequent proceeding on the debt for which the wage assignment was given as security may be made by registered or certified mail if a notice of defense has been timely provided.

Section 41‑10‑400. An individual or entity is liable to the employee and the employer for statutory damages in the sum of five hundred dollars, actual damages, and reasonable attorney’s fees for wrongfully:

(1) serving a notice on an employee or serving a notice which does not conform with the requirements contained in this article;

(2) causing a demand to be served for the wages of an employee; or

(3) failing to release a demand.

Section 41‑10‑410. A discharge in bankruptcy is a valid defense to a legal action commenced upon a wage assignment executed by the bankrupt party before the adjudication in bankruptcy; provided, however, that an assignment of wages is void after three years from the date of its execution.

Section 41‑10‑420. A person who wilfully and wrongfully serves a demand or causes a demand to be served as assignee for wages when no assignment has been made to him or under an invalid assignment with intent to obtain for himself or another person the wages of an employee is guilty of a misdemeanor punishable by:

(1) a fine of not more than two hundred fifty dollars or imprisonment for not more than thirty days for a first offense; and

(2) a fine of not less than five hundred dollars or imprisonment for not more than sixty days for a second or subsequent offense.

Section 41‑10‑430. An employer may not discharge or suspend an employee by reason of the fact that his earnings have been subjected to wage assignments on his employer for an indebtedness.

Section 41‑10‑440. The provisions of this article:

(1) do not apply to orders for withholding of income entered by the court for the support of another person;

(2) are not subject to the wage garnishment provisions of Chapter 5, Title 37; and

(3) apply only to entities with fifty or more employees.”

SECTION 2. Sections 41‑10‑10 through 41‑10‑110 of the 1976 Code are designated as Article 1, Chapter 10, Title 41 entitled “General Provisions”.

SECTION 3. This act takes effect upon approval by the Governor.

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