**South Carolina General Assembly**

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**S. 291**

**STATUS INFORMATION**

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Summary: Minimum Wage

**HISTORY OF LEGISLATIVE ACTIONS**

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 12/7/2022 Senate Referred to Committee on **Labor, Commerce and Industry**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 180)

 1/10/2023 Senate Referred to Committee on **Labor, Commerce and Industry** (Senate Journal‑page 180)

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**VERSIONS OF THIS BILL**

[12/07/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/291_20221207.docx)

A bill

to amend the South Carolina Code of Laws by adding Section 41‑10‑210 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; by adding Section 41‑10‑220 so as to provide employers shall pay employees a certain minimum wage; by adding Section 41‑10‑230 so as to provide it is unlawful for an employer to retailiate against an employee who exercises his rights with respect to the minimum wage; by adding Section 41‑10‑240 so as to provide certain remedies to the employee and state; by adding Section 41‑10‑250 so as to provide civil enforcement authority to enforce the Act to the Attorney General; by adding Section 41‑10‑260 so as to provide a statute of limitations; by adding Section 41‑10‑270 so as to provide that an action brought under the act may be brought as a class action; by adding Section 41‑10‑280 so as to limit authority of the department with respect to implementing the act; by amending Section 6‑1‑130, relating to Political subdivisions, so as to establish a scope of authority to set minimum wage rates; by amending Section 44‑22‑160, relating to Employment within facility, compensation, and the right to refuse nontherapeutic employment, so as to require payment of the minimum wage rate; by amending Section 53‑1‑100, relating to Operation of machine shops exempt from chapter and conscientious opposition to Sunday work, so as to require payment of the minimum wage rate; by amending Section 53‑1‑110, relating to the manufacture or finishing of textile products exempt from chapter and conscientious opposition to Sunday work, so as to require payment of the minimum wage rate; to designate the existing sections of chapter 10, title 41 as article 1 entitled “payment of wages generally”; and to make conforming changes.

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

SECTION 1. Chapter 10, Title 41 of the S.C. 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. Employers shall, at a minimum, pay employees a wage at an hourly rate of fifteen dollars 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 41‑10‑230. 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 the South Carolina Minimum Wage Act. Rights protected include, but are not limited to, the right to file a complaint or inform any person of his potential rights pursuant to the South Carolina Minimum Wage Act, and to assist him in asserting these rights.

 Section 41‑10‑240. (A) A person aggrieved by a violation of the South Carolina Minimum Wage Act 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 difference in wages 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 is 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 the difference in 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, the person aggrieved 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 act or omission was not a violation of the South Carolina Minimum Wage Act, the court may, in its discretion, award no liquidated damages or award any amount not to exceed the amount of unpaid wages. The court shall not award any economic damages on a claim for unpaid wages not expressly authorized in this article.

 (2) Upon prevailing in an action brought pursuant to this article, the person aggrieved also is 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 the South Carolina Minimum Wage Act, must not include punitive damages.

 Section 41‑10‑250. The Attorney General may bring a civil action to enforce the South Carolina Minimum Wage Act, 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 41‑10‑260. The statute of limitations for an action brought pursuant to this article is five years and begins on the date on which the alleged violation occurred.

 Section 41‑10‑270. An action brought pursuant to this article may be brought as a class action under state law.

 Section 41‑10‑280. The authority of the department in implementing the South Carolina Minimum Wage Act, pursuant to this article is limited to that authority expressly granted by the General Assembly.

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

 Section 53‑1‑110. Notwithstanding any other 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 S.C. Code are designated as Article 1, Chapter 10, Title 41 entitled “Payment of Wages Generally”.

SECTION 7. The Code Commissioner is directed to change, correct, or conform all references in Chapter 10, Title 41 from “chapter” to “article” as appropriate to reflect the designated provisions.

SECTION 8. 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 9. The provisions of this act take effect upon approval by the Governor.

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