CHAPTER 29

Employment and Workforce ‑ Department of Employment and Workforce

Code Commissioner’s Note

At the direction of the Code Commissioner “Employment and Workforce” substituted for “Employment Security” and “Department of Employment and Workforce” substituted for “Employment Security Commission”, to bring the chapter title in conformance with 2010 Act No. 146.

CROSS REFERENCES

Corporate officers exempt from unemployment benefits absent employer election, procedure, exceptions, see Section 41‑27‑265.

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

**SECTION 41‑29‑10.** Unemployment Security provisions; administration by Department of Employment and Workforce.

 Chapters 27 through 41 of this title shall be administered by the South Carolina Department of Employment and Workforce.

HISTORY: 1962 Code Section 68‑51; 1952 Code Section 68‑51; 1942 Code Section 7035‑90; 1936 (39) 1716; 1941 (42) 369; 1946 (44) 1474; 1951 (47) 506; 2010 Act No. 146, Section 4, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment rewrote this section, replacing the South Carolina Employment Security Commission with the South Carolina Department of Employment and Workforce.

CROSS REFERENCES

Employment Security Administration Fund, see Sections 41‑33‑410 et seq.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 266.

**SECTION 41‑29‑20.** Department of Employment and Workforce; creation; executive director; appointment; removal; compensation.

 There is hereby created the South Carolina Department of Employment and Workforce which must be managed and operated by an executive director nominated by the State Department of Employment and Workforce Review Committee and appointed by the Governor. The term of the executive director is conterminous with that of the Governor and until a successor is appointed pursuant to this act. The executive director is subject to removal by the Governor as provided in Section 1‑3‑240(B). The executive director shall receive compensation as established under the provisions of Section 8‑11‑160 and for which funds have been authorized in the general appropriations act. For the purposes of this chapter, “department” means the South Carolina Department of Employment and Workforce.

HISTORY: 1962 Code Section 68‑52; 1952 Code Section 68‑52; 1942 Code Section 7035‑90; 1936 (39) 1716; 1941 (42) 369; 2010 Act No. 146, Section 5, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment rewrote this section to create the South Carolina Department of Employment and Workforce and provide for appointment of its executive director.

**SECTION 41‑29‑25.** Executive Director; discharge of duties.

 (A) The executive director shall discharge his duties:

 (1) in good faith;

 (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

 (3) in a manner he reasonably believes to be in the best interests of the department. As used in this chapter, best interests means a balancing of the following:

 (a) achieving the purposes of the department;

 (b) preservation of the financial integrity of the department and its ongoing operations; and

 (c) exercise of the powers of the department in accordance with good business practices and the requirements of applicable laws and regulations.

 (B) In discharging his duties, the executive director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

 (1) one or more officers or employees of the State whom the executive director reasonably believes to be reliable and competent in the matters presented; or

 (2) legal counsel, public accountants, or other persons as to matters the executive director reasonably believes are within the person’s professional or expert competence.

 (C) The executive director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

 (D) Nothing in this section gives rise to a cause of action against the executive director or any decision made by the executive director concerning departmental operations or development.

HISTORY: 2010 Act No. 146, Section 120, eff March 30, 2010.

**SECTION 41‑29‑30.** Repealed by 2010 Act No. 146, Section 123, eff March 30, 2010.

Editor’s Note

Former Section 41‑29‑30 was entitled “Secretary” and was derived from 1962 Code Section 68‑53; 1952 Code Section 68‑53; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

**SECTION 41‑29‑35.** Executive Director; appointment.

 (A) The Executive Director of the Department of Employment and Workforce must be appointed pursuant to the procedure set forth in Section 41‑27‑720.

 (B) The committee must nominate three applicants found qualified to serve as executive director for the Governor’s consideration. In making nominations to the Governor, the committee should consider race, gender, national origin, and other demographic factors to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State. The committee must also give due consideration to a person’s ability, area of expertise, dedication, compassion, common sense, and integrity. If fewer than three applicants are found qualified to serve as executive director, the committee must resolicit for applicants and continue the screening process until three applicants are found qualified and nominated.

 (1) A person may not be appointed to serve as permanent executive director unless the committee finds the person qualified.

 (2) The Governor must transmit the name of his appointee to the Senate for advice and consent.

 (3) If the Governor rejects all of the nominees, the committee must reopen the nominating process.

 (C) For the committee to find a person qualified, he must have:

 (1) a baccalaureate or more advanced degree from:

 (a) a recognized institution of higher learning requiring face to face contact between its students and instructors prior to completion of the academic program;

 (b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

 (c) an institution of higher learning chartered before 1962; and

 (2) a background of substantial duration and expertise in business, labor and employment, employment benefits, human resource management, or five years’ experience as a practicing attorney.

 (D) The committee may find a person qualified although he does not have a background of substantial duration and expertise in one of the five enumerated areas contained in subsection (C)(2) of this section if two‑thirds of the committee vote to qualify this candidate and provide written justification of their decision in the report as to the qualifications of the candidates.

HISTORY: 2010 Act No. 146, Section 119, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Editor’s Note

2010 Act No. 146, Section 111, provides as follows:

“In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.”

2010 Act No. 146, Section 121, provides as follows:

“The Governor must appoint a person meeting the requirements for executive director provided in this act to serve as interim executive director. The interim executive director serves until March 31, 2011, or until a successor is appointed pursuant to this act. The interim executive director is appointed upon the advice and consent of the Senate.”

**SECTION 41‑29‑40.** Unemployment Compensation and Employment Service Divisions; directors.

 There are created under the department two coordinate divisions, the South Carolina State Employment Service Division, and a division to be known as the Unemployment Compensation Division. Each division must be administered by a full‑time salaried director, who is subject to the supervision and direction of the department. The department may appoint, fix the compensation of, and prescribe the duties of the directors of these divisions. The director of each division shall be responsible to the department for the administration of his respective division and has the power and authority as vested in him by the department.

HISTORY: 1962 Code Section 68‑54; 1952 Code Section 68‑54; 1942 Code Section 7035‑90; 1936 (39) 1716; 1941 (42) 369; 2010 Act No. 146, Section 33, eff March 30, 2010; 2010 Act No. 234, Section 6, eff January 1, 2011.

Editor’s Note

2010 Act No. 146, Section 111, provides as follows:

“In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.”

Effect of Amendment

The first 2010 amendment substituted “department” for five occurrences of “commission”; and made other nonsubstantive changes.

The second 2010 amendment, in the first sentence, deleted reference to Section 41‑5‑10; and deleted the former fourth sentence relating to nonpartisan appointments.

**SECTION 41‑29‑50.** Appointment of advisory councils.

 The executive director may appoint local or industry advisory councils, composed in each case of equal numbers of employer representatives and employee representatives, who may fairly be regarded as representatives because of their vocation, employment or affiliations, and of members representing the general public as the executive director designates. Local councils shall aid the department in formulating a policy and discussing problems relating to the administration of Chapters 27 through 41 of this title, and in assuring impartiality and freedom from political influence in the solution of those problems. Members of local advisory councils must serve without compensation, must receive per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees.

HISTORY: 1962 Code Section 68‑55; 1952 Code Section 68‑55; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 34, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to authorize the executive director to appoint advisory councils; substituted “department” for “commission” following “councils shall aid the” in the second sentence; substituted “must receive per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees” for “shall be reimbursed for any necessary expenses”; and made other nonsubstantive changes throughout the section.

**SECTION 41‑29‑60.** Repealed by 2010 Act No. 146, Section 123, eff March 30, 2010.

Editor’s Note

Former Section 41‑29‑60 was entitled “Organization; procedure; seal” and was derived from 1962 Code Section 68‑56; 1952 Code Section 68‑56; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

**SECTION 41‑29‑70.** Employment of personnel.

 Subject to the provisions of Chapters 27 through 41 of this title, the department may employ or retain on a contract basis other accountants, attorneys, experts necessary to perform the department’s duties.

HISTORY: 1962 Code Section 68‑57; 1952 Code Section 68‑57; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 35, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to authorize the department to employ or contract with personnel to perform the department’s duties.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 266.

**SECTION 41‑29‑80.** Classification of positions; salary schedules; personnel standards.

 The department shall:

 (1) classify all positions under Chapters 27 through 41 of this title except those exempted by the Federal Social Security Act or regulations of the Secretary of Labor or his successors; and

 (2) establish salary schedules and minimum personnel standards. These standards must conform to the minimum standards prescribed under the provisions of Section 303(a)(1) of the Federal Social Security Act, as amended, and applicable state law and regulations.

HISTORY: 1962 Code Section 68‑58; 1952 Code Section 68‑58; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2010 Act No. 146, Section 36, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; added subsection designations (1) and (2); added “, and applicable state law and regulations” at the send of subsection (2); and made other nonsubstantive changes.

**SECTIONS 41‑29‑90, 41‑29‑100.** Repealed by 2010 Act No. 146, Section 123, eff March 30, 2010.

Editor’s Note

Former Section 41‑29‑90 was entitled “Regulations as to appointment, promotion and demotion of employees” and was derived from 1962 Code Section 68‑59; 1952 Code Section 68‑59; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

Former Section 41‑29‑100 was entitled “Delegation of authority; bonds” and was derived from 1962 Code Section 68‑60; 1952 Code Section 68‑60; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

**SECTION 41‑29‑110.** Duties and powers of Department.

 The department must promulgate regulations necessary to carry out the provisions of Chapters 27 through 41 of this title, employ personnel, make expenditures, require reports not otherwise provided for in these chapters, conduct investigations or take other action as it considers necessary or suitable to administer its duties and exercise its powers pursuant to the title.

HISTORY: 1962 Code Section 68‑61; 1952 Code Section 68‑61; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 37, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to set out the duties and powers of the department.

CROSS REFERENCES

Benefit ratio for zero taxable wages, see S.C. Code of Regulations R. 47‑6.

Definitions, Department of Employment and Workforce, see S.C. Code of Regulations R. 47‑3.

Delinquent report, see S.C. Code of Regulations R. 47‑5.

Employer, employee relationship, see S.C. Code of Regulations R. 47‑8.

Employer legal entity classification, see S.C. Code of Regulations R. 47‑4.

Interest surcharge, see S.C. Code of Regulations R. 47‑7.

Requirement that the department work with the State Department of Mental Health to find employment for mentally disabled citizens, see Section 44‑22‑190.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 268.

**SECTION 41‑29‑120.** Employment stabilization; report requirements; joint electronic filing.

 (A)(1) The department, with the advice and aid of its advisory councils and through its appropriate divisions, shall take appropriate steps to:

 (a) reduce and prevent unemployment;

 (b) encourage and assist in adopting practical methods of vocational training, retraining, and vocational guidance;

 (c) investigate, recommend, advise, and assist in establishing and operating, by a municipality, county, school district, and the State, of reserves for public works to be used in times of business depression and unemployment;

 (d) promote the reemployment of unemployed workers throughout the State in every other way that is feasible; and

 (e) promote the joint electronic filing of Employer Unemployment Insurance Benefits Payments and Reports in conjunction with South Carolina Business One Stop to provide employment units a single point of contact for reporting and paying state taxes.

 (2) While pursuing these goals, the department also shall carry on and publish the results of statistical surveys, investigations, and research studies.

 (B) The department may require from an employing unit for the department’s cooperation with the Bureau of Labor Statistics of the United States Department of Labor or its successor agency the United States Bureau of Labor Statistics report to:

 (1) assign industry codes to South Carolina employers under the ES‑202 Covered Employment and Wages Program;

 (2) collect employment information on multiple worksites for South Carolina employers under the ES‑202 Covered Employment and Wages Program;

 (3) collect monthly employment, hours, and earnings from South Carolina employers under the BLS‑790 Current Employment Statistics Program;

 (4) collect employment information from federal employers under the ES‑202 Covered Employment and Wages Program; and

 (5) collect occupational employment and wage information from South Carolina employers under the Occupational Employment Statistics Program.

 (C) As used in this section, “employing unit” means an entity employing more than twenty individuals.

 (D) The department must institute the following measures to the fullest extent possible under state and federal law:

 (1) increase eligibility reviews and investigations as to violations of Sections 41‑35‑110 and 41‑35‑120 and enforce appropriate disqualifications and penalties;

 (2) increase investigations of violations of Chapter 41, Title 41 and enforce appropriate penalties;

 (3) increase investigations of violations of Article 3, Chapter 31, Title 41 and enforce appropriate penalties;

 (4) keep detailed voting and attendance records at all department and appellate panel hearings and make them available to the General Assembly;

 (5) keep detailed travel and expense records for department employees and appellate panelists and make them available to the General Assembly;

 (6) continue to work with the South Carolina Office of Research and Statistics of the Revenue and Fiscal Affairs Office to develop and continuously improve a customer service portal, to include increased interagency integration and data sharing, and keep the General Assembly regularly informed of its progress in upgrading its computer system through a possible multistate compact in cooperation with the federal government;

 (7) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee within five days of the effective date of this act as to the degree the department can accomplish or cannot accomplish each subitem in this subsection, and provide reasons why a subitem cannot be accomplished if the department cannot do so;

 (8) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee on the first day of each month in Fiscal Years 2010 and 2011 on the progress of each request; and

 (9) take all other actions necessary and prudent to effectively and efficiently manage the state’s unemployment benefits program.

HISTORY: 1962 Code Section 68‑62; 1952 Code Section 68‑62; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2002 Act No. 203, Section 1, eff April 10, 2002; 2010 Act No. 146, Section 38, eff March 30, 2010.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 2002 amendment designated subsection (A), in subsection (A), inserted “statistical surveys,” preceding “investigations and research studies”; and added subsections (B) and (C).

The 2010 amendment rewrote this section to require the department to take steps to stabilize employment in South Carolina, promote joint electronic filing requirements, and to report to and cooperate with various federal and state governmental entities.

CROSS REFERENCES

Delinquent report, see S.C. Code of Regulations R. 47‑5.

**SECTION 41‑29‑130.** Repealed by 2010 Act No. 146, Section 123, eff March 30, 2010.

Editor’s Note

Former Section 41‑29‑130 was entitled “Rules and regulations” and was derived from 1962 Code Section 68‑63; 1952 Code Section 68‑63; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

**SECTION 41‑29‑140.** Reciprocal agreements.

 The department may enter an arrangement with the appropriate agency of another state or of the federal government with respect to the combination of wages:

 (1) An agreement with the federal government where wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of the federal government, are considered wages for employment by an employer for the purpose of Sections 41‑35‑10 to 41‑35‑100 if the agency of the federal government agrees to reimburse the fund for the portion of benefits paid under Chapters 27 through 41 of this title on the basis of these wages or services as the department finds will be fair and reasonable and the department will reimburse the agency of the federal government with a reasonable portion of benefits paid under law of the federal government on the basis of employment or wages for employment by employers the department finds will be fair and reasonable to all affected interests.

 (2) The department shall participate in an arrangement for the payment of compensation on the basis of combining an individual’s wages and employment covered under Chapters 27 through 41 of this title with his wages and employment covered under the unemployment compensation law of another state approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in those situations and that includes provisions for:

 (a) applying the base period of a single state law to a claim involving the combining of an individual’s wages and employment covered under two or more state unemployment compensation laws; and

 (b) avoiding the duplicate use of wages and employment by reason of this combining.

 (3) This reimbursement is considered a benefit for the purpose of Section 41‑35‑50 and Article 1, Chapter 33 of this title. The department may make to another state or federal agency and receive from another state or federal agency reimbursement from or to the fund in accordance with and made pursuant to this section.

HISTORY: 1962 Code Section 68‑64; 1952 Code Section 68‑64; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1971 (57) 950; 1973 (58) 248; 2010 Act No. 146, Section 39, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission” throughout this section; and made other nonsubstantive changes.

CROSS REFERENCES

Benefits payable under Title XV of the Social Security Act, as amended, see S.C. Code of Regulations R. 47‑35.

Payment of benefits to interstate claimants and the combination of wage credits, see S.C. Code of Regulations R. 47‑29.

Reciprocal agreements, generally, see Section 41‑27‑550.

**SECTION 41‑29‑150.** Records; inspection and copying; confidentiality; violation; penalty.

 An employing unit must keep true and accurate work records containing information the department prescribes. These records must be open to inspection and subject to being copied by the department or its authorized representative at a reasonable time and as often as necessary. The department and the chairman of an appeal tribunal may require from an employing unit a sworn or unsworn report with respect to persons employed by it that he or it considers necessary for the effective administration of Chapters 27 through 41 of this title. Information obtained in this manner or from an individual pursuant to the administration of these chapters, except to the extent necessary for the proper administration of such chapters, shall be held confidential and may not be published or be open to public inspection, other than to the public employees in the performance of their public duties, in any manner revealing the individual’s or employing unit’s identity. However, a claimant or his legal representative at a hearing before an appeal tribunal must be supplied information from these records to the extent necessary for the proper presentation of his claim. An employee or member of the department who violates a provision of this section must be fined not less than twenty dollars or more than five hundred dollars, imprisoned for not longer than ninety days, or both.

HISTORY: 1962 Code Section 68‑65; 1952 Code Section 68‑65; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 40, eff March 30, 2010; 2011 Act No. 3, Section 4, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission” throughout this section; and made other nonsubstantive changes.

The 2011 amendment substituted “five hundred dollars” for “two hundred dollars” in the last sentence.

CROSS REFERENCES

Delinquent report, see S.C. Code of Regulations R. 47‑5.

Records retention, illegal aliens and private employment, see S.C. Code of Regulations R. 71‑10003.

**SECTION 41‑29‑160.** Information generally confidential.

 Except as otherwise provided in Chapters 27 through 41 of this Title information obtained from any employing unit or individual pursuant to the administration of such chapters and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual’s or employing unit’s identity.

HISTORY: 1962 Code Section 68‑66; 1952 Code Section 68‑66; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369.

CROSS REFERENCES

Freedom of Information Act, see Sections 30‑4‑10 et seq.

**SECTION 41‑29‑170.** Permitted disclosure of information.

 (A) A claimant or his legal representative must be supplied with information from the records, to the extent necessary for the proper presentation of his claim in a proceeding pursuant to Chapters 27 through 41, subject to restrictions the department may prescribe by regulation.

 (B)(1) Upon written request, the department may furnish information obtained through the administration of Chapters 27 through 42 including, but not limited to, the name, address, ordinary occupation, wages, and employment status of a covered worker or recipient of benefits and the recipient’s rights to additional benefits pursuant to Chapters 27 through 41, to:

 (a) an agency or agent of the United States charged with the administration of public works or assistance through public employment;

 (b) a state agency similarly charged or charged with workforce development or training or with jobs recruitment;

 (c) an agency or entity to which disclosure is permitted or required by federal statute or regulation or by state law; and

 (d) any private or public person or organization when the disclosure is necessary to permit private or public contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private or public parties to increase the department’s efficiency or quality of service to the public. The private or public person or organization shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as department employees.

 (2) This disclosure is subject to restrictions the department may prescribe by regulation.

 (C)(1) The State Employment Office must furnish, upon request of a public agency administering the Temporary Assistance to Needy Families (TANF) or child support programs, a state agency administering food stamp coupons, a state or federal agency administering the new hire directory, or a public housing authority, information in its possession relating to:

 (a) an individual who is receiving, has received, or has applied for unemployment insurance;

 (b) the amount of benefits being received;

 (c) the current home address of these individuals;

 (d) whether an offer of work has been refused and, if so, a description of the job and the terms, conditions, and rate of pay;

 (e) in the case of requests from a public housing authority, a listing of the current employer and previous employers for the available preceding six calendar quarters;

 (f) in the case of requests from the state or federal agency that issues food stamp coupons or the new hire directory, a listing of the current employer and address and previous employers and their addresses, including wage information, for the available preceding six calendar quarters.

 The requesting agency is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible.

HISTORY: 1962 Code Section 68‑67; 1952 Code Section 68‑67; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1977 Act No. 161 Section 8; 1995 Act No. 98, Section 3, eff June 12, 1995; 1997 Act No. 71, Section 42, eff June 10, 1997; 2002 Act No. 203, Section 2, eff April 10, 2002; 2010 Act No. 146, Section 41, eff March 30, 2010; 2011 Act No. 3, Section 5, eff March 14, 2011.

Effect of Amendment

The 1995 amendment revised subsection (2) of this section.

The 1997 amendment rewrote this section.

The 2002 amendment, in subsection (A), deleted the second and third sentences; redesignated former subsection (B) as (C), and added a new subsection (B) relating to disclosure of covered worker information to specific agencies upon written request.

The 2010 amendment substituted “department” for “commission” throughout this section; redesignated the subparagraphs of subsections (B) and (C); and made other nonsubstantive changes.

The 2011 amendment in subsection (B)(1)(b), inserted “or charged with workforce development or training or with jobs recruitment”, and deleted “and” at the end; in subsection (B)(1)(c), added “; and” at the end; and inserted subsection (B)(1)(d) relating to delegation of work to public or private parties.

CROSS REFERENCES

Freedom of Information Act, see Sections 30‑4‑10 et seq.

Attorney General’s Opinions

Collaborative review by the Department of Employment and Workforce and the Office of Research and Statistics of the Budget and Control Board of requirements set in place by the Department of Labor should ensure that participation in the Data Warehouse Initiative fully complies with state and federal law. S.C. Op.Atty.Gen. (Sept. 22, 2010) 2010 WL 3896164.

**SECTION 41‑29‑180.** Reports shall be kept to minimum.

 The department shall endeavor, both for the relief of the clerical work of employers and its own office, to confine reporting to the minimum necessary for the proper administration of the law, and, except for necessary separation, low earnings, special reports or notices, or wage and employment reports required pursuant to Section 41‑29‑140.

HISTORY: 1962 Code Section 68‑68; 1952 Code Section 68‑68; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 2010 Act No. 146, Section 42, eff March 30, 2010; 2011 Act No. 3, Section 6, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made one other nonsubstantive change.

The 2011 amendment deleted “, it shall not require reports as to the earnings of individual employees more frequently than quarterly” from the end.

CROSS REFERENCES

Records and reports required of employers, see S.C. Code of Regulations R. 47‑14, 47‑15.

**SECTION 41‑29‑190.** Witnesses, oaths, certifications, production of books and the like.

 In the discharge of the duties imposed by Chapters 27 through 41 of this title, the department or a duly authorized representative of it may administer an oath and affirmation, take a deposition, certify to an official act and issue a subpoena to compel the attendance of a witness and the production of books, papers, correspondence, memoranda and other records considered necessary as evidence in connection with a disputed claim or the administration of Chapters 27 through 41 of this title.

HISTORY: 1962 Code Section 68‑69; 1952 Code Section 68‑69; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1966 (54) 2640; 2010 Act No. 146, Section 43, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Due process requirements and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Penalties for failure to obey subpoena, see Section 41‑29‑210.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 270, 279.

**SECTION 41‑29‑200.** Self‑incriminating testimony.

 A person must not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the department, an appeal tribunal, or their duly authorized representative or in obedience to the subpoena of them in a cause or proceeding before the department or an appeal tribunal on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual must not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying must not be exempt from prosecution and punishment for perjury committed in testifying.

HISTORY: 1962 Code Section 68‑70; 1952 Code Section 68‑70; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1966 (54) 2640; 2010 Act No. 146, Section 44, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Due process requirements and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Privilege against self‑incrimination, see SC Const, Art 1, Section 12.

United States Supreme Court Annotations

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self‑incrimination. L Ed 2d 869.

**SECTION 41‑29‑210.** Penalties for contumacy or failure to obey subpoena.

 (1) In case of contumacy by a person or refusal to obey a subpoena issued to a person, a court of this State or judge of this State within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the department or a duly authorized representative may issue to him an order requiring him to appear before the department or a duly authorized representative of the department to produce evidence if ordered to do so or to give testimony touching the matter under investigation or in question. Failure to obey an order of the court may be punished as a contempt of the order.

 (2) A person who, without just cause, fails or refuses to attend and testify; to answer a lawful inquiry; or to produce books, papers, correspondence, memoranda and other records, if it is in his power to do this in accordance with a subpoena of the department or a duly authorized representative, must be punished by a fine of not less than twenty nor more than two hundred dollars or by imprisonment for not more than thirty days. Each failure to obey a subpoena constitutes a separate offense.

HISTORY: 1962 Code Section 68‑71; 1952 Code Section 68‑71; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1966 (54) 2640; 2010 Act No. 146, Section 45, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for three occurrences of “Commission”; and made other nonsubstantive changes throughout this section.

CROSS REFERENCES

Commission’s subpoena power, see Section 41‑29‑190.

Due process requirements and judicial review of administrative actions, see SC Const, Art 1, Section 22.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Torts. 38 S.C. L. Rev. 219 (Autumn 1986).

**SECTION 41‑29‑220.** Examination of returns or reports of national banks.

 The department may request the Comptroller of the Currency of the United States to cause an examination of the correctness of a return or report of a national banking association rendered pursuant to the provisions of Chapters 27 through 41 of this title, and may in connection with this request transmit this report or return it to the Comptroller of the Currency of the United States as provided in Section 3305(c) of the federal Internal Revenue Code.

HISTORY: 1962 Code Section 68‑72; 1952 Code Section 68‑72; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 2010 Act No. 146, Section 46, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑29‑230.** State and Federal cooperation.

 (1) In the administration of Chapters 27 through 41 of this title, the department must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters, and act, through the promulgation of appropriate rules, regulations, administrative methods and standards, as necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner‑Peyser Act, and the Federal‑State Extended Unemployment Compensation Act of 1970.

 (2) In the administration of the provisions in Article 3 Chapter 35, of this title, which are enacted to conform with the requirements of the Federal‑State Extended Unemployment Compensation Act of 1970, the department must act as necessary to:

 (a) ensure that the provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Secretary of Labor; and

 (b) secure to this State the full reimbursement of the federal share of extended benefits paid pursuant to this title that are reimbursable under the federal act.

HISTORY: 1962 Code Section 68‑73; 1952 Code Section 68‑73; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1957 (50) 580; 1971 (57) 950; 2010 Act No. 146, Section 47, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes throughout this section.

CROSS REFERENCES

Employer, employee relationship, see S.C. Code of Regulations R. 47‑8.

Employer legal entity classification, see S.C. Code of Regulations R. 47‑4.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 151.

**SECTION 41‑29‑240.** Cooperation with Railroad Retirement Board and other Federal agencies.

 The department may make the state’s record relating to the administration of Chapters 27 through 41 of this title available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the board’s expense, copies of this record as the Railroad Retirement Board considers necessary for its purposes. The department may afford reasonable cooperation with an agency of the United States charged with the administration of an unemployment insurance law.

HISTORY: 1962 Code Section 68‑74; 1952 Code Section 68‑74; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 48, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 151.

**SECTION 41‑29‑250.** Publication of certain material; internet access.

 The department must:

 (A) print and make available for public distribution the text of Chapters 27 through 41 of this title and its:

 (1) regulations;

 (2) annual reports to the Governor and General Assembly; and

 (3) other material the department considers relevant and suitable; or

 (B) make the information required by subsection (A) available on its Internet website.

HISTORY: 1962 Code Section 68‑75; 1952 Code Section 68‑75; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 49, eff March 30, 2010; 2011 Act No. 3, Section 7, eff March 14, 2011.

Effect of Amendment

The 2010 amendment rewrote this section to require the department to make certain materials available in print and on its internet web site.

The 2011 amendment in subsection (A)(3), substituted “or” for “and”; and in subsection (B) substituted “make the information required by subsection (A) available” for “furnish this material to a person on request and make it available”.

CROSS REFERENCES

Freedom of Information Act, see Sections 30‑4‑10 et seq.

**SECTION 41‑29‑260.** Repealed by 2010 Act No. 146, Section 123, eff March 30, 2010.

Editor’s Note

Former Section 41‑29‑260 was entitled “Commissioners may file opinions” and was derived from 1962 Code Section 68‑76; 1952 Code Section 68‑76; 1943 (43) 318.

**SECTION 41‑29‑270.** Emergency unemployment compensation system.

 Notwithstanding the provisions of Chapters 27 through 41 of this title, the department may promulgate regulations necessary for the operation of an emergency unemployment compensation system in the event of an enemy attack or natural disaster, as declared by the President of the United States, that disrupts or endangers the department’s usual procedures or facilities.

HISTORY: 1962 Code Section 68‑77; 1957 (50) 580; 2010 Act No. 146, Section 50, eff March 30, 2010; 2011 Act No. 3, Section 8, eff March 14, 2011.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “Commission”; and made other nonsubstantive changes.

The 2011 amendment substituted “may promulgate” for “must promulgate”, and inserted “or natural disaster, as declared by the President of the United States,”.

**SECTION 41‑29‑280.** Annual reports.

 Not later than the fifteenth day of January annually, the department shall submit to the Governor and the General Assembly a report covering the administration and operation of Chapters 27 through 41 of this title during the preceding fiscal year and make recommendations for amendments to these chapters as the department considers proper. These reports must include a balance sheet of the money in the fund in which there must be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserves must be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

HISTORY: 1962 Code Section 68‑78; 1952 Code Section 68‑78; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 51, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for three occurrences of “Commission”; and made other nonsubstantive changes.

**SECTION 41‑29‑290.** Recommendations as to change in contribution or benefit rates.

 When the department believes a change in contribution or benefit rates is necessary to protect the solvency of the fund, it promptly must inform the Governor and the General Assembly of this information and make recommendations regarding it.

HISTORY: 1962 Code Section 68‑79; 1952 Code Section 68‑79; 1942 Code Section 7035‑91; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 52, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

**SECTION 41‑29‑300.** Department of Employment and Workforce Appellate Panel; creation; purpose; powers; composition.

 (A) There is created the Department of Employment and Workforce Appellate Panel within the Department of Employment and Workforce, which is separate and distinct from the department’s divisions. The sole purpose of the panel is to hear and decide appeals from decisions of the department’s divisions.

 (B)(1) The panel initially must be comprised of the members of the South Carolina Department of Employment and Workforce serving on the day before the effective date of this act. These initial panel members may serve in that temporary capacity until their successors are elected pursuant to this section.

 (2) The members of the appellate panel must be elected by the General Assembly, in joint session, for terms of four years and until their successors have been elected and qualified, commencing on the first day of July in each presidential election year. Initial elections for members of the appellate panel must be held before May 22, 2010. The seats on the appellate panel are designated as Seat 1, Seat 2, and Seat 3.

 (3) The appellate panel must elect one of its members to be chairman. A vacancy must be filled by the Governor through a temporary appointment until the next session of the General Assembly, at which time a joint session of the General Assembly shall elect an appellate panelist to fill the unexpired term.

 (4) The appellate panelists shall receive such compensation as may be established under the provisions of Section 8‑11‑160 and for which funds have been authorized in the general appropriations act but not to exceed compensation that is commensurate with their hearing duties.

 (C) A party only may appeal from a decision of the department directly to the panel. A party only may appeal a decision of the panel to an administrative law court in the manner provided in Section 41‑35‑750.

 (D) A quorum must consist of two panel members and is necessary to hear or decide an appeal under subsection (C). A decision of the panel must be rendered in writing and is subject to disclosure under the Freedom of Information Act.

 (E)(1) The Department of Employment and Workforce Review Committee must screen a person and find him qualified before he may be elected to serve as a member of the appellate panel. The qualifications that each panelist must possess, include, but are not limited to:

 (a) a baccalaureate or more advanced degree from:

 (i) a recognized institution of higher learning requiring face‑to‑face contact between its students and instructors prior to completion of the academic program;

 (ii) an institution of higher learning that has been accredited by a regional or national accrediting body; or

 (iii) an institution of higher learning chartered before 1962; or

 (b) a background of at least five years in any combination of the following fields of expertise:

 (i) general business administration;

 (ii) general business management;

 (iii) management at the Department of Employment and Workforce, or its predecessor;

 (iv) human resources management;

 (v) finance; or

 (vi) law.

 (2) A member of the General Assembly may not be elected to serve as a panelist or appointed to be a panelist while serving in the General Assembly; nor shall a member of the General Assembly be elected or appointed to be a panelist for a period of two years after the member either:

 (a) ceases to be a member of the General Assembly; or

 (b) fails to file for election to the General Assembly in accordance with Section 7‑11‑15.

 (3) When screening an appellate panel candidate and making its findings regarding the candidate, the South Carolina Department of Employment and Workforce Review Committee must give due consideration to a person’s ability, area of expertise, dedication, compassion, common sense, and integrity.

 (F)(1) A panelist is bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8‑13‑320. A panelist also must comply with the applicable requirements of Chapter 13, Title 8.

 (2) A panelist and his administrative assistant annually must attend and successfully complete a workshop of at least three continuing education hours in ethics.

 (G) Notwithstanding another provision of law, it shall be mandatory for a member of the Department of Employment and Workforce Appellate Panel to retire not later than the end of the fiscal year in which he reaches his seventy‑second birthday.

HISTORY: 2010 Act No. 146, Section 1, eff March 30, 2010; 2010 Act No. 234, Section 9, eff January 1, 2011; 2011 Act No. 63, Section 18, eff June 14, 2011.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Editor’s Note

2010 Act No. 146, Section 111, provides as follows:

“In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.”

Effect of Amendment

The 2010 amendment added subsection (G) relating to the Department of Employment and Workforce Appellate Panel.

The 2011 amendment in subsection (B)(2) added the last sentence relating to the appellate panel designations.

Attorney General’s Opinions

Panelist should use their discretion and best judgment to determine if there is impropriety in presiding when a party who works closely with them is before the Appellate Panel. S.C. Op.Atty.Gen. (July 1, 2011) 2011 WL 3346422.

Since the Appellate Panel is bound by the Code of Judicial Conduct, panelists should follow the Judicial Canons. S.C. Op.Atty.Gen. (July 1, 2011) 2011 WL 3346422.

The South Carolina Department of Employment and Workforce must comply with the appellate process set forth in Section 41‑35‑690 and Section 41‑29‑300, meaning that cases appealed from the Appeal Tribunal would first go to the Appellate Panel and then, if appealed again, the case would go to the Administrative Law Court. S.C. Op.Atty.Gen. (July 1, 2011) 2011 WL 3346422.

Service on the Department of Workforce and Employment Appellate Panel is an office for purposes of dual office holding. S.C. Op.Atty.Gen. (June 25, 2010) 2010 WL 2678694.

**SECTION 41‑29‑310.** Workforce Investment Act transferred to Department of Employment and Workforce.

 The Workforce Investment Act program created by the Workforce Investment Act of 1988 and transferred to the Department of Commerce by Executive Order 2005‑09 is transferred to the Department of Employment and Workforce on the effective date of this section.

HISTORY: 2010 Act No. 146, Section 2, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.