COMMITTEE REPORT

April 6, 2021

**S. 533**

Introduced by Senators Shealy, Gambrell and Allen

S. Printed 4/6/21--S.

Read the first time February 9, 2021.

**THE COMMITTEE ON LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Joint Resolution (S. 533) to prohibit the use of Section 14(c) of the Fair Labor Standards Act of 1938 to pay subminimum wages to individuals, etc., respectfully

**REPORT:**

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

Amend the joint resolution, as and if amended, on page 1, line 42, by inserting an appropriately numbered new SECTION:

/SECTION \_\_. (A) Beginning on January 1, 2022, and annually thereafter, the Department of Disabilities and Special Needs shall submit a report to the General Assembly concerning the payment of subminimum wage in South Carolina. The report shall identify all providers in this State that maintain a Section 14(c) certificate, identify which of those providers pay subminimum wage, identify which of those providers used to pay subminimum wage but have stopped that practice, and identify which of those providers that stopped paying subminimum wage did so due to an increase in the federal minimum wage. /

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This resolution prohibits the use of Section 14(C) of the FLSA to pay subminimum wages to individuals with disabilities. If authorized by the United States Department of Labor, an employer currently can pay a special minimum wage that is less than the federal minimum wage to an individual whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury.

**Department of Administration.** The Department of Administration (DOA) indicates that there is no data available to estimate the expenditure impact of this bill on state agencies because state payroll information does not indicate the disability status of individuals. Therefore, this resolution will have an undetermined impact on general fund, federal funds, and other funds expenditures.

**Department of Disabilities and Special Needs.** This resolution will have no direct expenditure impact on DDSN. However, DDSN surveyed a number of entities about the impact of this resolution. Eighteen of the thirty-two responding entities reported possessing a certificate issued under Section 14(C) of the FLSA and employing individuals with disabilities at subminimum wage levels. These entities reported employing approximately 838 individuals on 119 contracts with businesses. Prior to the COVID-19 public health emergency, the number reportedly totaled more than 1000 individuals on over 200 contracts. These entities employ approximately 205 staff to support these individuals who are working in subminimum wage work. A total of nine entities report a plan to transition those individuals to minimum wage jobs. The entities also reported that they planned to make approximately 200 additional referrals of former subminimum wage workers to VRD if 14(C) access is eliminated.

**Vocational Rehabilitation Department.** VRD indicates that it does not use subminimum wages with its consumers. Consumers receiving job readiness training as part of their rehabilitation are paid a training stipend by VRD, and this stipend has been set at or above the minimum wage level since January 2016. Currently, VRD works with 13,020 individuals with disabilities who are seeking employment. The agency indicates that any of these individuals placed into employment through VRD must be earning at least minimum wage for the placement to be considered a successful employment outcome. This bill will have no expenditure impact on VRD as the agency does not participate in the practice of paying subminimum wages.

**Local Expenditure**

Using data available through the United States Department of Labor, RFA identified multiple county government agencies as holding or having applied for a subminimum wage certificate as of January 2021. Cherokee County Disabilities and Special Needs Board and Colleton County Disabilities and Special Needs Board were included on this list as paying a subminimum wage. Thirty-six individuals were paid a subminimum wage under this certificate in Cherokee County and twenty-nine individuals were paid a subminimum wage under this certificate in Colleton County. The expenditure impact of this resolution on local government expenditure is undetermined because exact wage data is not available and because RFA cannot estimate if any action will be taken to reduce the number of employed individuals by employers who pay a subminimum wage.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **JOINT RESOLUTION**

TO PROHIBIT THE USE OF SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT OF 1938 TO PAY SUBMINIMUM WAGES TO INDIVIDUALS WITH DISABILITIES.

Whereas, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes employers, after receiving a certificate from the United States Department of Labor’s Wage and Hour Division, to pay special minimum wages that are less than the federal minimum wage to workers who have disabilities, for the work being performed; and

Whereas, Section 14(c)(1) defines a “worker with a disability” as an individual whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury; and

Whereas, in 2020, more than two thousand nine hundred South Carolinians with disabilities were employed in settings in which they could be paid a subminimum wage; and

Whereas, South Carolina continues to have one of the highest unemployment rates for persons with disabilities in the country. Now, therefore,

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

SECTION 1. Employers, community rehabilitation programs, and hospital patient care workers at regional centers shall not use Section 14(c) of the Fair Labor Standards Act of 1938 to pay disabled employees a subminimum wage. No individual with a disability may be paid less than the federal minimum wage.

SECTION 2. This joint resolution takes effect on August 1, 2024.

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