~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

May 29, 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 5/29/12--S. [SEC 5/30/12 12:01 PM]

Read the first time February 9, 2012.

**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.

‑‑‑‑XX‑‑‑‑