CHAPTER 7

Right to Work

**SECTION 41‑7‑10.** Denial of right to work for membership or nonmembership in labor organization declared to be against public policy.

 It is hereby declared to be the public policy of this State that the right of persons to work must not be denied or abridged because of membership or nonmembership in a labor union or labor organization.

HISTORY: 1962 Code Section 40‑46; 1954 (48) 1692; 2012 Act No. 197, Section 1, eff June 7, 2012.

Effect of Amendment

The 2012 amendment made nonsubstantive changes.

**SECTION 41‑7‑20.** Agreement between employer and labor organization denying nonmembers right to work or requiring union membership unlawful.

 Any agreement or combination between any employer and any labor organization whereby persons not members of such labor organizations shall be denied the right to work for such employer or whereby such membership is made a condition of employment, or of continuance of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy, unlawful and an illegal combination or conspiracy.

HISTORY: 1962 Code Section 40‑46.1; 1954 (48) 1692.

**SECTION 41‑7‑30.** Labor organization membership as condition of employment.

 (A) It is unlawful for an employer to require an employee, as a condition of employment, or of continuance of employment to:

 (1) be or become or remain a member or affiliate of a labor organization or agency;

 (2) abstain or refrain from membership in a labor organization; or

 (3) pay any fees, dues, assessments, or other charges or sums of money to a person or organization.

 (B) It is unlawful for a person or a labor organization to directly or indirectly participate in an agreement, arrangement, or practice that has the effect of requiring, as a condition of employment, that an employee be, become, or remain a member of a labor organization or pay to a labor organization any dues, fees, or any other charges; such an agreement is unenforceable.

 (C) It is unlawful for a person or a labor organization to induce, cause, or encourage an employer to violate a provision of this section.

HISTORY: 1962 Code Section 40‑46.2; 1954 (48) 1692; 2002 Act No. 357, Section 3, eff July 26, 2002.

Effect of Amendment

The 2002 amendment rewrote this section.

**SECTION 41‑7‑40.** Deduction of labor organization membership dues from wages.

 Nothing in this chapter precludes an employer from deducting from the wages of the employees and paying over to a labor organization, or its authorized representative, membership dues in a labor organization; however, the employer must have received from each employee, on whose account the deductions are made, a written assignment which must not be irrevocable for a period of more than one year or until the termination date of any applicable collective agreement or assignment, whichever occurs sooner. After one year, the employee has the absolute right to revoke the written assignment allowing for deduction of membership dues in a labor union.

HISTORY: 1962 Code Section 40‑46.3; 1954 (48) 1692; 2002 Act No. 357, Section 4, eff July 26, 2002.

Effect of Amendment

The 2002 amendment substituted “precludes an” for “shall preclude any”, “a labor organization” for “any labor organization”, “however,” for “provided, that”, “must have” for “has”, “the deductions” for “such deductions”, “must” for “shall”, and “until” for “beyond”; and added the last sentence.

**SECTION 41‑7‑50.** Labor organization contract violating right to work provisions.

 It shall be unlawful for any labor organization to enter into or seek to effect any agreement, contract or arrangement with any employer declared to be unlawful by Sections 41‑7‑20 or 41‑7‑30.

HISTORY: 1962 Code Section 40‑46.4; 1954 (48) 1692.

**SECTION 41‑7‑60.** Applicability of right to work provisions.

 The provisions of Sections 41‑7‑20 to 41‑7‑40 shall not apply to any contract, otherwise lawful, in force and effect on March 19, 1954, but they shall apply to all contracts thereafter concluded and to any renewal or extension of existing contracts.

HISTORY: 1962 Code Section 40‑46.5; 1954 (48) 1692.

**SECTION 41‑7‑70.** Interference with right to work, compelling labor organization membership, picketing and the like made unlawful.

 It shall be unlawful for any person, acting alone or in concert with one or more persons:

 (1) By force, intimidation, violence or threats thereof, or violent or insulting language, directed against the person or property, or any member of the family of any person (a) to interfere, or attempt to interfere, with such person in the exercise of his right to work, to pursue or engage in, any lawful vocation or business activity, to enter or leave any place of his employment, or to receive, ship or deliver materials, goods or services not prohibited by law or (b) to compel or attempt to compel any person to join, or support, or refrain from joining or supporting any labor organization; or

 (2) To engage in picketing by force or violence or in such number or manner as to obstruct or interfere, or constitute a threat to obstruct or interfere, with (a) free ingress to, and egress from, any place of employment or (b) free use of roads, streets, highways, sidewalks, railways or other public ways of travel, transportation or conveyance.

 Nothing in this section shall be construed so as to prohibit peaceful picketing permissible under the National Labor‑Management Relations Act of 1947 and the Constitution of the United States.

HISTORY: 1962 Code Section 40‑46.6; 1954 (48) 1692.

**SECTION 41‑7‑75.** Director to ensure chapter compliance; right of entry.

 (A) The Director of the South Carolina Department of Labor, Licensing and Regulation or his designee shall ensure compliance with this chapter and shall cooperate with an employee in the investigation and enforcement of a meritorious claim against an employer. Hearings may be held to satisfy the director as to the justice of any claim.

 (B) Upon the filing of a complaint with the department, the director or his designee may enter a place of employment for the purpose of evaluating compliance with this chapter. Any effort of a person or entity to obstruct the director or his designee in the performance of duties under this chapter is a violation of this chapter and punishable accordingly.

 (C) After a complaint has been filed, if the director or his designee is denied admission to a place of employment, a warrant may be obtained pursuant to Section 41‑15‑260.

HISTORY: 2002 Act No. 357, Section 1, eff July 26, 2002.

**SECTION 41‑7‑80.** Penalties.

 An employer, labor organization, or other person who violates a provision of this chapter is guilty of a misdemeanor, and, upon conviction, must be punished by imprisonment for not less than ten days nor more than thirty days, a fine of not less than one thousand dollars but not more than ten thousand dollars, or both.

HISTORY: 1962 Code Section 40‑46.7; 1954 (48) 1692; 2012 Act No. 197, Section 2, eff June 7, 2012.

Effect of Amendment

The 2012 amendment rewrote this section.

**SECTION 41‑7‑90.** Remedy for violation of rights; relief which court may grant.

 (A) A person whose rights are adversely affected by contract, agreement, assemblage, or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter may apply to a court having general equity jurisdiction for appropriate relief. The court may grant and issue a restraining and other appropriate orders 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, actual damages, costs, and attorneys’ fees sustained or incurred by 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 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.

HISTORY: 1962 Code Section 40‑46.8; 1954 (48) 1692; 2012 Act No. 197, Section 3, eff June 7, 2012.

Editor’s Note

2012 Act No. 197, Section 8, provides as follows:

“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.”

Effect of Amendment

The 2012 amendment rewrote the section.

**SECTION 41‑7‑100.** Civil penalties; review and appeals.

 (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 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) An employer, labor organization, or other person aggrieved by a final action of the department may appeal the decision to the Administrative Law Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court. Service of a petition requesting a review does not stay the department’s decision pending completion of the appellate process.

HISTORY: 2002 Act No. 357, Section 2, eff July 26, 2002; 2012 Act No. 197, Section 4, eff June 7, 2012.

Editor’s Note

2004 Act No. 202, Section 3, provides as follows:

“Wherever the term ‘Administrative Law Judge Division’ appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act.”

Effect of Amendment

The 2012 amendment substituted “An employer, labor organization, or other person” for “A person” in subsections (A) and (C); substituted “ten thousand” for “one hundred” in subsection (A); and substituted “Court” for “Judge Division” throughout subsection (C).

**SECTION 41‑7‑110.** Right‑to‑work notice posting by employer permitted; requirements of posting.

 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.

HISTORY: 2012 Act No. 197, Section 5, eff June 7, 2012.

**SECTION 41‑7‑130.** Contemporaneous filings by labor organizations of documents required to be filed with Secretary of Labor.

 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. Sections 401, et seq. as amended.

HISTORY: 2012 Act No. 197, Section 6, eff June 7, 2012.