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.

CROSS REFERENCES

Department of Labor incorporated into Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

Right‑to‑work notice posting by employer permitted, requirements of posting, see Section 41‑7‑110.

LIBRARY REFERENCES

51 C.J.S., Labor Relations Section 10.

RESEARCH REFERENCES

ALR Library

105 ALR 5th 243 , Validity, Construction, and Application of State Right‑To‑Work Provisions.

Encyclopedias

23 Am. Jur. Trials 187, National Labor Relations Board Representation Case Proceedings.

S.C. Jur. Labor Relations Section 16, Purpose.

S.C. Jur. Labor Relations Section 19, Powers.

Forms

Am. Jur. Pl. & Pr. Forms Labor and Labor Relations Section 358 , Introductory Comments.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

LAW REVIEW AND JOURNAL COMMENTARIES

Public Sector Labor Relations: Union Security Agreements in the Public Sector Since Abood. 33 S.C. L. Rev. 521 (March 1982).

Attorney General’s Opinions

Whether a person is a member of a labor union or not, he or she is guaranteed by Section 41‑7‑10 et seq. the right to work in South Carolina. The purpose of our right to work statute is not only to preserve the individual freedom of working men and women in South Carolina, but also to encourage industrial development in this State. Thus, it is crucial to our industrial growth in South Carolina that the right to work law be interpreted in light of its original intent and purpose. The South Carolina right to work act governs employment at the Mack plant in Winnsboro, South Carolina. The Act broadly proscribes any hiring or termination practices that discriminate in favor of union membership. Application of the collective bargaining agreement entered into between the UAW and Mack Truck to the hiring practices in Winnsboro could result in discrimination against South Carolina workers on the basis of non‑membership in a union and would thus violate our right to work law. 1987 Op Atty Gen, No. 87‑102, p 270.

It was not the intent of the legislature to include public employment within the scope of this section [Code 1962 Section 40‑46]. 1963‑64 Op Atty Gen, No 1778, p 298.

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

This chapter was clearly intended to preserve the right of laboring men to employment notwithstanding closed shop agreements entered into between employers and labor unions, not to confer upon labor unions the right to recover damages from employers because of unfair labor practices. Friendly Soc. of Engravers and Sketchmakers v. Calico Engraving Co. (C.A.4 (S.C.) 1956) 238 F.2d 521, certiorari denied 77 S.Ct. 810, 353 U.S. 935, 1 L.Ed.2d 758. Labor And Employment 1239; Labor And Employment 1430; Labor And Employment 1991

If this chapter be construed as attempting to confer the right to recover damages from employers because of unfair labor practices upon labor unions, it is clear that the attempt must fail in cases where exclusive jurisdiction with respect to the conduct involved has been vested by Congress in the National Labor Relations Board. Friendly Soc. of Engravers and Sketchmakers v. Calico Engraving Co. (C.A.4 (S.C.) 1956) 238 F.2d 521, certiorari denied 77 S.Ct. 810, 353 U.S. 935, 1 L.Ed.2d 758. Labor And Employment 1676(1)

The South Carolina Right to Work statute would have to yield to a Federal statute regulating interstate commerce which authorized a union shop agreement between an express company engaged in interstate commerce and a labor brotherhood. Sams v. Brotherhood of Ry. and S. S. Clerks, Sumter Lodge No. 6193 (C.A.4 (S.C.) 1956) 233 F.2d 263.

The evils to which the legislative intent and the remedial purpose of this chapter were directed are (1) union control of employment on the one hand; and (2) employer boycott of, or insistence upon, union labor on the other. Brabham v Miller Electric Co., 237 SC 540, 118 SE2d 167 (1961). Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

The Right‑to‑Work Law is intended to preserve the right of laboring men to employment notwithstanding closed shop or similar agreements. Both the statute, and the underlying public policy which it sought to effectuate, are designed to eliminate union affiliation as a criterion for employment. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300. Labor And Employment 965

The Right‑to‑Work Law affords a remedy for the recovery of both actual and punitive damages. Where the tortious conduct is of compelling state interest affecting the public welfare and security of its citizens, the state remedy is not excluded by the National Labor Relations Act. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

There is a legal obligation upon the part of employers to abstain from terminating employment on grounds of nonaffiliation with unions. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300. Labor And Employment 1456

South Carolina imposes legal obligations upon employers by its Right‑to‑Work Statute, the breach of which is tortious. The obligation created affords the right to working men to work without regard to union affiliation. These obligations arose by operation of law and their breach gives rise to a cause of action in tort. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

The breach of this obligation gives rise to an action in tort. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

A right of action sounding in tort may arise from conduct violative of the Right‑to‑Work Law. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300. Labor And Employment 1962

If a subcontractor is directly employed by a company and that company terminates his employment due to absence of union affiliation, that subcontractor would have a cause of action in tort against the company resulting from a breach of contract. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

Cited in Chapman v. Southeast Region I. L. G. W. U. Health and Welfare Recreation Fund (D.C.S.C. 1968) 280 F.Supp. 766, appeal dismissed 401 F.2d 626.

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was preempted by the Labor Management Relations Act (LMRA), where determination as to whether union acted properly in denying member his pension benefits was substantially dependent upon an analysis of union’s constitution; overruling Nichols v. Amalgamated Clothing and Textile Workers Union, AFL‑CIO, CLC, 305 S.C. 323, 408 S.E.2d 237. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 995; States 18.53

LMRA preempted union member’s Right‑to‑Work Act claim that actions of local union deprived him of his property interest in pension benefits provided by union pension benefit fund, since claim was substantially dependent upon analysis of union constitution. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 995; States 18.53

ERISA preempted union member’s Right‑to‑Work Act claim against union for benefits he claimed he would have been entitled to but for union’s actions, since resolution of claim directly affected pension fund and potentially altered criteria for receipt of benefits. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.53

Federal district court’s remand of union member’s Right‑to‑Work Act claims to state court did not preclude state court on remand, from considering union’s argument that state claims were preempted by ERISA. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Removal Of Cases 109

Union rule requiring that members not work for employers determined to be “in difficulty” did not violate Right‑to‑Work Act which prohibits compulsory union membership; union did not compel employees to join as condition of employment with any employer but rather prohibited voluntary union members from working for certain employers. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 1013

Right‑to‑Work Act was directed at twin evils of union control of employment and employer boycott of, or insistence upon, union labor. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 991

Union member’s failure to satisfy conditions for union pension benefits to vest was fatal to his claim that union’s expulsion of him, for working for particular employee, constituted “threat against property” as required to support his Right‑to‑Work Act claim. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C.App. 1996) 324 S.C. 412, 481 S.E.2d 135, rehearing denied, certiorari granted, affirmed 335 S.C. 562, 518 S.E.2d 583, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 1049

Applied in Burris v. Electro Motive Mfg. Co. (S.C. 1966) 247 S.C. 579, 148 S.E.2d 687.

The employer’s freedom to hire and fire the employee at its pleasure is subject to the limitation, under this chapter, that neither the hiring nor the firing may be grounded or conditioned upon union membership or nonmembership, referral or nonreferral, approval or nonapproval. Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592. Labor And Employment 33

2. Preemption

NLRA did not preempt use or anticipated use by Governor of South Carolina and Director of South Carolina Department of Labor, Licensing and Regulation (LLR) of South Carolina’s right‑to‑work law; labor union plaintiffs had not alleged that those officials had conditioned receipt of benefits on recipient’s union or nonunion status or identified a single instance in which officials actually enforced right‑to‑work law, or any other state law, in a way that burdened unions’ rights under the NLRA. International Ass’n of Machinists and Aerospace Workers v. Haley, 2011, 832 F.Supp.2d 612, affirmed 482 Fed.Appx. 759, 2012 WL 1548194. Labor and Employment 968; States 18.46

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was predicated upon the existence of union’s pension plan and, thus, was preempted by ERISA. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

A state rule of law may be preempted even though it has no direct nexus with ERISA plans if its effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting and administration, or if allowing states to have such rules would impair the ability of a plan to function simultaneously in a number of states. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

**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.

CROSS REFERENCES

Right‑to‑work notice posting by employer permitted; requirements of posting, see Section 41‑7‑110.

LIBRARY REFERENCES

51 C.J.S., Labor Relations Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:5, Right to Work.

Employment Coordinator Labor Relations Section 15:43, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

NOTES OF DECISIONS

In general 1

Preemption 2

1. In general

South Carolina imposes legal obligations upon employers by its Right‑to‑Work Statute, the breach of which is tortious. The obligation created affords the right to working men to work without regard to union affiliation. These obligations arose by operation of law and their breach gives rise to a cause of action in tort. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was preempted by the Labor Management Relations Act (LMRA), where determination as to whether union acted properly in denying member his pension benefits was substantially dependent upon an analysis of union’s constitution; overruling Nichols v. Amalgamated Clothing and Textile Workers Union, AFL‑CIO, CLC, 305 S.C. 323, 408 S.E.2d 237. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 995; States 18.53

Freedom of contract is subordinate to public policy, and where the legislative intent to declare an act unlawful is apparent from consideration of this chapter, it matters not that the prohibition of the act is not declared in specific language; for an act that violates the general policy and spirit of this chapter is no less within its condemnation than one that is in literal conflict with its terms. Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

There is no distinction between an agreement to hire only through the union and one to hire only such persons as have been cleared through or referred or approved by it. In either case the employment monopoly forbidden by this section [Code 1962 Section 40‑46.1] would be assured. Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

An agreement whereby membership in good standing in the union is required as a condition to employment or continued employment by the employer, thus conditioning employment or continuance of employment upon clearance through and referral by the defendant union, is in violation of this section [Code 1962 Section 40‑46.1]. Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

2. Preemption

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was predicated upon the existence of union’s pension plan and, thus, was preempted by ERISA. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

A state rule of law may be preempted even though it has no direct nexus with ERISA plans if its effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting and administration, or if allowing states to have such rules would impair the ability of a plan to function simultaneously in a number of states. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

**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.

CROSS REFERENCES

Discharging employees for political opinions or the exercise of civil rights, see Section 16‑17‑560.

Discrimination by employers against union members, see Section 41‑1‑20.

Right‑to‑work notice posting by employer permitted; requirements of posting, see Section 41‑7‑110.

LIBRARY REFERENCES

51 C.J.S., Labor Relations Section 10.

RESEARCH REFERENCES

ALR Library

105 ALR 5th 243 , Validity, Construction, and Application of State Right‑To‑Work Provisions.

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:5, Right to Work.

Employment Coordinator Labor Relations Section 40:17, Yellow‑Dog Contracts; Promises to Refrain from Union Membership as Condition of Employment.

Employment Coordinator Labor Relations Section 40:18, Closed Shop Agreements; Promises to Join Union as Condition of Employment.

Employment Coordinator Labor Relations Section 40:19, Payment of Union Dues or Fees as Condition of Employment.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

LAW REVIEW AND JOURNAL COMMENTARIES

Public Sector Labor Relations: Union Security Agreements in the Public Sector Since Abood. 33 S.C. L. Rev. 521 (March 1982).

NOTES OF DECISIONS

In general 1

Employers 2

Preemption 3

1. In general

Cardinal rule of statutory construction is for court to ascertain and effectuate intent of the legislature. Branch v. City of Myrtle Beach (S.C. 2000) 340 S.C. 405, 532 S.E.2d 289. Statutes 1072

Right‑to‑work statute, which states that it is unlawful for any employer to require any employee, as a condition of employment, to refrain from membership in labor organization, does not cover public employment; plain meaning of phrase “any employer” excludes public employment. Branch v. City of Myrtle Beach (S.C. 2000) 340 S.C. 405, 532 S.E.2d 289. Labor And Employment 999

This section [Code 1962 Section 40‑46.2] and Code 1962 Section 40‑46.7 make it a criminal offense to withhold wages of an employee against his will, to be paid over as fees or dues to any organization. Kimbrell v. Jolog Sportswear, Inc. (S.C. 1962) 239 S.C. 415, 123 S.E.2d 524.

State jurisdiction to determine an employee’s claim for damages for the tortious withholding of his wages has not been pre‑empted by any act of Congress. Kimbrell v. Jolog Sportswear, Inc. (S.C. 1962) 239 S.C. 415, 123 S.E.2d 524.

Since State remedy is not excluded by National Labor Relations Act. Where the tortious conduct is of compelling State interest affecting the public welfare and security of its citizens the State remedy is not excluded by the National Labor Relations Act. Kimbrell v. Jolog Sportswear, Inc. (S.C. 1962) 239 S.C. 415, 123 S.E.2d 524.

Quoted in Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

2. Employers

Right‑to‑work statute, which provided that “any employer” could not require any employee to refrain from membership in labor organization as condition of employment, applied to public as well as private sector employers, and thus applied to city, in supervisory firefighters’ action for declarative and injunctive relief challenging policy that prevented supervisory firefighters from joining labor organization. Branch v. City of Myrtle Beach (S.C.App. 1998) 332 S.C. 575, 505 S.E.2d 925, rehearing denied, reversed 340 S.C. 405, 532 S.E.2d 289. Labor And Employment 999

3. Preemption

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was preempted by the Labor Management Relations Act (LMRA), where determination as to whether union acted properly in denying member his pension benefits was substantially dependent upon an analysis of union’s constitution; overruling Nichols v. Amalgamated Clothing and Textile Workers Union, AFL‑CIO, CLC, 305 S.C. 323, 408 S.E.2d 237. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 995; States 18.53

Union member’s claim that union violated the Right‑to‑Work Act by attempting to interfere with member’s exercise of his right to work, thereby causing member to lose his pension benefits, was predicated upon the existence of union’s pension plan and, thus, was preempted by ERISA. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

A state rule of law may be preempted even though it has no direct nexus with ERISA plans if its effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting and administration, or if allowing states to have such rules would impair the ability of a plan to function simultaneously in a number of states. Lewis v. Local 382, Intern. Broth. of Elec. Workers (AFL‑CIO) (S.C. 1999) 335 S.C. 562, 518 S.E.2d 583, rehearing denied, certiorari denied 120 S.Ct. 800, 528 U.S. 1080, 145 L.Ed.2d 674. Labor And Employment 407; States 18.51

**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.

CROSS REFERENCES

Right‑to‑work notice posting by employer permitted; requirements of posting, see Section 41‑7‑110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

Treatises and Practice Aids

Employment Coordinator Compensation Section 32:186, South Carolina; Union Dues.

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:28, Checkoff Authorization Requirements.

United States Supreme Court Annotations

Freedom of speech and association, labor unions, service fee charges to nonmembers, national litigation expenses, see Locke v. Karass, 2009, 129 S.Ct. 798, 555 U.S. 207, 172 L.Ed.2d 552.

Freedom of speech, electioneering communication, corporations, see Citizens United v. Federal Election Com’n, 2010, 130 S.Ct. 876, 558 U.S. 310, 175 L.Ed.2d 753.

Freedom of speech, public employee unions, ban on payroll deductions for political activities, see Ysursa v. Pocatello Educ. Ass’n, 2009, 129 S.Ct. 1093, 555 U.S. 353, 172 L.Ed.2d 770, on remand 561 F.3d 1048.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Chapman v. Southeast Region I. L. G. W. U. Health and Welfare Recreation Fund (D.C.S.C. 1967) 265 F.Supp. 675.

**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.

CROSS REFERENCES

Constitutional provisions pertaining to impairment of contracts, see SC Const, Art 1, Section 4, US Const, Art I, Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:5, Right to Work.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

**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.

CROSS REFERENCES

Right‑to‑work notice posting by employer permitted; requirements of posting, see Section 41‑7‑110.

LIBRARY REFERENCES

51B C.J.S., Labor Relations Section 1009.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:7, Interference With Protected Rights.

Employment Coordinator Labor Relations Section 40:50, Coercion of Employees in the Exercise of Their Protected Rights.

Employment Coordinator Labor Relations Section 40:79, Hindering Employment of Others.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

United States Supreme Court Annotations

Governmental regulation of nonlabor picketing as violating freedom of speech or press under Federal Constitution’s First Amendment—Supreme Court cases. 101 L Ed 2d 1052.

NOTES OF DECISIONS

In general 1

1. In general

An attempt to coerce a union member from engaging in particular nonunion employment by means of threatening his expected retirement benefits constituted a tortious violation of the Right to Work Act. Layne v. International Broth. of Elec. Workers, (AFL‑CIO), Local No. 382 (S.C. 1978) 271 S.C. 346, 247 S.E.2d 346.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 17, Penalties and Relief.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 62:206, Criminal Offenses.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 40‑46.7] and Code 1962 Section 40‑46.2 make it a criminal offense to withhold wages of an employee against his will to be paid over as fees or dues to any organization. Kimbrell v. Jolog Sportswear, Inc. (S.C. 1962) 239 S.C. 415, 123 S.E.2d 524.

Quoted in Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

**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.

CROSS REFERENCES

Right‑to‑work notice posting by employer permitted, requirements of posting, see Section 41‑7‑110.

LIBRARY REFERENCES

51A C.J.S., Labor Relations Section 774.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 46, Right to Work.

S.C. Jur. Labor Relations Section 16, Purpose.

S.C. Jur. Labor Relations Section 17, Penalties and Relief.

S.C. Jur. Labor Relations Section 19, Powers.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 62:203, Right to Work.

Guide to Employment Law and Regulation 2d Section 61:5, Union Security Agreements.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

1. In general

The Right‑to‑Work Law affords a remedy for the recovery of both actual and punitive damages. Where the tortious conduct is of compelling state interest affecting the public welfare and security of its citizens, the state remedy is not excluded by the National Labor Relations Act. Gregory Elec. Co. v. Custodis Const. Co. (D.C.S.C. 1970) 312 F.Supp. 300.

Cited in Chapman v. Southeast Region I. L. G. W. U. Health and Welfare Recreation Fund (D.C.S.C. 1968) 280 F.Supp. 766, appeal dismissed 401 F.2d 626.

While there have been several South Carolina decisions under that State’s Right‑to‑Work Statute, no claim of exclusivity of state remedy has been asserted, on the contrary, the question has generally been whether there is Federal exclusivity. Chapman v. Southeast Region I. L. G. W. U. Health and Welfare Recreation Fund (D.C.S.C. 1967) 265 F.Supp. 675.

Quoted in Branham v. Miller Elec. Co. (S.C. 1961) 237 S.C. 540, 118 S.E.2d 167, 92 A.L.R.2d 592.

**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).

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Labor and Labor Relations Section 358 , Introductory Comments.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 16, Purpose.

**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.