CHAPTER 1

Sundays

**SECTION 53‑1‑5.** Provisions inapplicable after 1:30 p.m. on Sunday; rights of employees, lessees, and franchisees to refuse to work; discrimination against persons who worship on Saturday prohibited.

 The provisions of this chapter do not apply after the hour of 1:30 p.m. on Sunday. Any employee of any business which operates on Sunday under the provisions of this section has the option of refusing to work in accordance with Section 53‑1‑100. Any employer who dismisses or demotes an employee because he is a conscientious objector to Sunday work is subject to a civil penalty of treble the damages found by the court or the jury plus court costs and the employee’s attorney’s fees. The court may order the employer to rehire or reinstate the employee in the same position he was in prior to dismissal or demotion without forfeiture of compensation, rank, or grade.

 No proprietor of a retail establishment who is opposed to working on Sunday may be forced by his lessor or franchisor to open his establishment on Sunday nor may there be discrimination against persons whose regular day of worship is Saturday.

HISTORY: 1985 Act No. 86 Section 1; 1995 Act No. 134, Section 1, eff (became law without the Governor’s signature on June 13, 1995).

Effect of Amendment

The 1995 amendment corrected a reference to treble instead of triple damages.

LIBRARY REFERENCES

83 C.J.S., Sunday Sections 3‑12.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 47, Sunday Work.

S.C. Jur. Blue Laws Section 13, After 1:30 p.m. on Sunday.

S.C. Jur. Blue Laws Section 14, Certain Counties Exempt.

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

S.C. Jur. Blue Laws Section 22, Establishment Clause.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

S.C. Jur. Master and Servant Section 48, Sunday Pay.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 117:10, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

LAW REVIEW AND JOURNAL COMMENTARIES

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

Attorney General’s Opinions

Section 53‑1‑5, which provides for conscientious objection to Sunday work for employees, is presumably constitutional. 1985 Op Atty Gen, No. 85‑93, p 259.

NOTES OF DECISIONS

In general 1

1. In general

In action brought by service station owners against oil company, challenging lease requirements that they remain open 24 hours a day, requirement that dealers operate station on 24‑hour schedule did not violate South Carolina Blue Law, under Section 53‑1‑5, where dealers did not oppose working on Sunday but, rather, opposed being forced to operate during unprofitable hours; the 24‑hour provision, as it related to Sunday operation of service stations, was neither illegal nor against public policy of South Carolina since operating a service station falls within exception to the Blue Laws, as specified in Section 53‑1‑40. Wingard v. Exxon Co., U.S.A., 1992, 819 F.Supp. 497.

**SECTION 53‑1‑6.** Failure of law enforcement officer to enforce provisions of chapter.

 A determination that a sheriff or other law enforcement officer has failed to enforce the provisions of this chapter to the best of his ability constitutes neglect of duty and misconduct.

HISTORY: 1985 Act No. 86 Section 5.

**SECTION 53‑1‑10.** Permit required for holding sports and entertainment events.

 (A) It shall be unlawful to operate for professional purposes athletic events, public exhibitions, historic or musical entertainment, or concerts unless a permit shall first be obtained from the town or city council, if the activity is in an incorporated town or city, or from the governing body of the county if the activity takes place outside of an incorporated town or city by either the sponsor of the athletic or entertainment event or exhibition or the individual participant.

 (B) When a permit is granted as required by this section, the town or city council or county governing body may by resolution suspend the 1:30 p.m. opening hour provided in Section 53‑1‑5 and allow businesses to operate after the hour of 10:00 a.m. on Sunday.

HISTORY: 1962 Code Section 64‑1; 1952 Code Section 64‑1; 1942 Code Section 1733; 1932 Code Section 1733; Cr. C. ‘22 Section 715; Cr. C. ‘12 Section 700; Cr. C. ‘02 Section 502; G. S. 1633; R. S. 387; 1896 (22) 331; 1961 (52) 98; 1978 Act No. 482; 1980 Act No. 363; 1983 Act No. 121 Section 1; 1995 Act No. 134, Section 2, eff (became law without the Governor’s signature on June 13, 1995).

Effect of Amendment

The 1995 amendment designated the first paragraph as (A) and added paragraph (B).

CROSS REFERENCES

Day for judicial sales, see Section 15‑39‑680.

Exception of sale of art and craft objects or craft exhibitions held pursuant to Section 53‑1‑10 from provisions of Sections 53‑1‑40, see Sections 53‑1‑50.

Exemption of certain automobile races from the prohibitions of this section, see Section 53‑1‑15.

Offense of gambling on Sunday, see Section 16‑19‑70.

Retaking escaped prisoner on Sunday, see Section 17‑13‑100.

Sale of alcoholic liquors on Sunday, see Section 61‑6‑4160.

Sale of beer and wine on Sundays, see Sections 61‑4‑120, 61‑4‑140.

Service of criminal process on Sunday, see Section 17‑13‑90.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 9, Engaging in Sports Activities.

S.C. Jur. Blue Laws Section 10, Motion Pictures, Athletic Sports and Musical Concerts.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 82:231, Time Off Statutes.

United States Supreme Court Annotations

Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 104 L Ed 2d 1078.

Attorney General’s Opinions

It is not necessary for enforcement officers to wait until actual racing of vehicles begins in order to make a valid arrest for the offense of engaging in a prohibited automobile race on Sunday; for example, if spectators have begun to gather in the grandstand, the plant appears to be in full operation preparatory to the beginning of the race, and automobiles are within the plant being prepared for the race, no further overt act is necessary to justify police action. 1967‑68 Op Atty Gen, No 2484, p 156.

Automobile and motorcycle races, musical events, car shows or exhibitions, and tractor pulls may be held on Sundays where permit is obtained pursuant to Section 53‑1‑10; advance ticket sales, admission of ticket holders and participants, and preparatory activities leading up to event can take place prior to 1:30 p.m. on Sunday if permit to hold particular event is obtained pursuant to Section 53‑1‑10. 1985 Op Atty Gen, No. 85‑130, p 354.

Promoters and supervisors of a prohibited public sport, participants such as drivers of vehicles and their mechanics and other helpers, and employees such as ticket sellers, ushers, guards and other such employees, could be charged with violation of this section in proper cases. 1967‑68 Op Atty Gen, No 2485, p 157.

No person can be guilty of more than one offense of engaging in a public sport on Sunday on any single day. 1967‑68 Op Atty Gen, No 2488, p 160.

It would be a violation of the Sunday closing law for any person to engage in the business of operating a pool table on Sunday. 1966‑67 Op Atty Gen, No 2313, p 134.

Stock car racing and drag racing are illegal on Sunday in South Carolina except in certain counties and cities under specified conditions. 1966‑67 Op Atty Gen, No 2337, p 166.

Operation of motion picture theaters on Sunday is illegal except in certain counties and cities under specified conditions. 1966‑67 Op Atty Gen, No 2338, p 169.

Automobile racing on Sunday is permitted in certain counties under specified conditions. 1966‑67 Op Atty Gen, No 2371, p 218.

Drag racing is permitted on Sundays by the provisions of this section when the conditions laid down in the statute are complied with. 1964‑65 Op Atty Gen, No 1781, p 14.

NOTES OF DECISIONS

In general 1

Constitutional matters 2

Interludes or common plays 4

Sports 3

1. In general

This section and Code 1962 Section 64‑2 are parallel sections and together with the ensuing sections of this chapter contain the legislative will with respect to the day of rest. Carolina Amusement Co. v. Martin (S.C. 1960) 236 S.C. 558, 115 S.E.2d 273, appeal dismissed, certiorari denied 81 S.Ct. 1914, 367 U.S. 904, 6 L.Ed.2d 1248.

History of Sunday statute outlined. Bishop v. Hanna (S.C. 1951) 218 S.C. 474, 63 S.E.2d 308, 24 A.L.R.2d 808.

While not applicable to corporations, law applies to officers and agents thereof. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610.

2. Constitutional matters

In tests of constitutionality, in the absence of factual showing to the contrary, it will be presumed that the classification of a Sunday law is reasonable, and the burden is on one denying its validity to show that there is no admissible hypothesis on which it can be justified. Carolina Amusement Co. v. Martin (S.C. 1960) 236 S.C. 558, 115 S.E.2d 273, appeal dismissed, certiorari denied 81 S.Ct. 1914, 367 U.S. 904, 6 L.Ed.2d 1248. Constitutional Law 1021; Constitutional Law 1040

This section does not violate either the State or the Federal Constitution. Palmetto Golf Club v Robinson, 143 SC 347, 141 SE 610 (1928). Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610.

This section being constitutional, its enforcement cannot be enjoined under exception to rule that equity will not restrain criminal prosecution in absence of pending equity suit between same parties to try same right in issue. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610. Injunction 1199; Injunction 1379

3. Sports

Motorcycle racing is included within the sports prohibited by this section, although not specifically named therein. State v. Galloway (S.C. 1962) 240 S.C. 136, 124 S.E.2d 910.

Payment of an admission fee is evidence of the public character of a sport, but not conclusive. State v. Galloway (S.C. 1962) 240 S.C. 136, 124 S.E.2d 910.

To constitute a violation of this section it must be shown that the defendant engaged in a public sport on Sunday, a public sport being defined in general as one given for the entertainment and pleasure of the public and to which the public or some portion thereof, is invited. State v. Galloway (S.C. 1962) 240 S.C. 136, 124 S.E.2d 910. Sunday 6(1)

This section does not prohibit a private sport engaged in solely for the entertainment and pleasure of those who participate therein. State v. Galloway (S.C. 1962) 240 S.C. 136, 124 S.E.2d 910.

The terms of this section prohibit the holding of a stock car meet or race on Sunday. Bishop v. Hanna (S.C. 1951) 218 S.C. 474, 63 S.E.2d 308, 24 A.L.R.2d 808.

This section does not prohibit playing golf on Sunday as a game, exercise, sport or pastime. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610. Sunday 6(1)

4. Interludes or common plays

So far as the purpose of this section is concerned, there is no distinction between a theatrical performance on a stage and one projected on a screen, therefore motion pictures are embraced in the words of this section, “interludes or common plays.” Carolina Amusement Co. v. Martin (S.C. 1960) 236 S.C. 558, 115 S.E.2d 273, appeal dismissed, certiorari denied 81 S.Ct. 1914, 367 U.S. 904, 6 L.Ed.2d 1248.

**SECTION 53‑1‑15.** Certain automobile races exempt from prohibitions of section 53‑1‑10.

 The provisions of Section 53‑1‑10 do not apply to automobile races which are scheduled to be two hundred fifty miles or more in length.

HISTORY: 1983 Act No. 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 9, Engaging in Sports Activities.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

**SECTION 53‑1‑20.** College and university campuses exempt from prohibition on Sunday public sports and pastimes.

 Notwithstanding any provision of law to the contrary, college and university campuses shall be exempt from the provisions of Section 53‑1‑10.

HISTORY: 1962 Code Section 64‑1.01; 1970 (56) 2289.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 9, Engaging in Sports Activities.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

**SECTION 53‑1‑30.** Amusement parks and certain fairs exempt from prohibition on Sunday public sports and pastimes.

 All amusement parks and recognized state and county fairs may operate on Sundays, except that the governing body of a county may by ordinance prohibit Sunday operation of recognized state and county fairs in the county between the hours of 10:00 a.m. and 1:00 p.m.

HISTORY: 1962 Code Section 64‑1.02; 1974 (58) 2608; 1985 Act No. 86 Section 4; 1986 Act No. 474.

CROSS REFERENCES

Circuses, carnivals and other traveling shows, see Section 52‑1‑20 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 11, Amusement Parks and Fairs.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

**SECTION 53‑1‑40.** Unlawful to work on Sunday.

 On the first day of the week, commonly called Sunday, it shall be unlawful for any person to engage in worldly work, labor, business of his ordinary calling or the selling or offering to sell, publicly or privately or by telephone, at retail or at wholesale to the consumer any goods, wares or merchandise or to employ others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise, excepting work of necessity or charity. Provided, that in Charleston County the foregoing shall not apply to any person who conscientiously believes, because of his religion, that the seventh day of the week ought to be observed as the Sabbath and who actually refrains from secular business or labor on that day.

HISTORY: 1962 Code Section 64‑2; 1952 Code Section 64‑2; 1942 Code Section 1732; 1932 Code Section 1732; Cr. C. ‘22 Section 713; Cr. C. ‘12 Section 698; Cr. C. ‘02 Section 500; G. S. 1631; R. S. 385; 1691 (2) 69; 1712 (2) 396; 1962 (52) 2134; 1971 (57) 441.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 4, Labor and Business.

S.C. Jur. Blue Laws Section 5, Sales.

S.C. Jur. Blue Laws Section 6, Contracts and Other Instruments.

S.C. Jur. Blue Laws Section 12, Works of Necessity or Charity.

S.C. Jur. Blue Laws Section 15, Specific Exceptions to Prohibitions of Sunday Work and Sales.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Equal Protection; Blue Laws. 31 S.C. L. Rev. 25.

Annual Survey of South Carolina Law: Constitutional Law: Equal Protection. 33 S.C. L. Rev. 21, (August 1981).

United States Supreme Court Annotations

Establishment and free exercise of religion clauses of Federal Constitution’s First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

Attorney General’s Opinions

The operation of bingo games on Sunday is not a “work of necessity or charity” and, therefore, should discontinue at midnight Saturday. 1988 Op Atty Gen, No. 88‑54, p 156.

A proposed family entertainment center at Dutch Square would not fall under the Amusement Park exception to 1962 Code Section 64‑2 [1976 Code Section 53‑1‑40], and thus should not be open on Sundays. 1975‑76 Op Atty Gen, No 4447, p 309.

NOTES OF DECISIONS

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1. In general

The purpose and effect of this section is not to aid religion, but are secular, that is, to set aside a uniform day of rest in furtherance of the State’s legitimate concern for the improvement of the health and general well‑being of its citizens. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

This section and Code 1962 Section 64‑1 are parallel sections and together with the ensuing sections of this chapter contain the legislative will with respect to the day of rest. Carolina Amusement Co. v. Martin (S.C. 1960) 236 S.C. 558, 115 S.E.2d 273, appeal dismissed, certiorari denied 81 S.Ct. 1914, 367 U.S. 904, 6 L.Ed.2d 1248.

Under this section, there can be but one entire offense on the same day, and the number of separate acts done does not increase the number of offenses. State v. James (S.C. 1908) 81 S.C. 197, 62 S.E. 214, 128 Am.St.Rep. 902, 16 Am.Ann.Cas. 277.

2. Constitutional matters

This section does not violate either the State or the Federal Constitution. Palmetto Golf Club v Robinson (1928) 143 SC 347, 141 SE 610. Carolina Amusement Co. v Martin (1960) 236 SC 558, 115 SE2d 273, 42 CCH LC ¶50223, cert den and app dismd 367 US 904, 6 L Ed 2d 1248, 81 S Ct 1914.

Attacks upon the constitutionality of Code 1962 Sections 64‑2 to 64‑2.5, based upon the contentions that (1) the commodity classification established therein is arbitrary, capricious and discriminatory; and (2) its provisions are so vague as to provide no definitive standard as to what conduct is permitted and what is prohibited, were properly rejected upon the authority of State v Solomon (1965) 245 SC 550, 141 SE2d 818, 14 ALR3d 1277, app dismd 382 US 204, 15 L Ed 2d 270, 86 S Ct 396, where the constitutionality of the present statute was upheld against basically similar attacks. Whitney Trading Corp. v McNair (1970) 255 SC 8, 176 SE2d 572, 64 CCH LC ¶52413.

The statute permitting grocery stores to do business on Sunday, provided that three or less employees are needed to operate the store, does not violate the constitutional right to equal protection of the laws, even though larger grocery stores that cannot be operated by three or less employees are prohibited from doing business; by limiting the workers to three, the statute insures that the day of rest is extended to the maximum number of citizens while at the same time making necessary food items available. State v. Smith (S.C. 1978) 271 S.C. 317, 247 S.E.2d 331.

This section is not so vague as to render it unconstitutional under the Due Process Clause of the Federal and State Constitutions; in light of the long history of this section and the common understanding and practices with reference to work of necessity on Sunday, reasonable people seeking to obey the law will know and are sufficiently warned of what conduct it makes criminal. Moreover, although it is true that various factors may enter into the determination of what is a work of necessity, this does not render the statute unconstitutional for vagueness. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

Since Code 1962 Sections 64‑2 to 64‑2.5, enacted under the police power of the State, serve a strong State interest in providing one uniform day of rest for its citizens, they do not violate the constitutional provisions respecting the establishment of religion or the free exercise thereof. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

Classification of conduct and sales permitted under Code 1962 Sections 64‑2 to 64‑2.5 are not so arbitrary as to violate the Equal Protection Clause of the United States and South Carolina Constitutions. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

An appeal to the Supreme Court of the United States from the decision of the South Carolina Supreme Court in State v Solomon (1965) 245 SC 550, 141 SE2d 818, was dismissed, Solomon v South Carolina (1965) 382 US 204, 15 L Ed 2d 270, 86 S Ct 396, for want of a substantial Federal question. That dismissal was a decision on the merits which was binding upon the Federal district court. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

That the day of rest selected by the legislative bodies coincides with the Christian Sabbath is no reason to invalidate the laws. Carolina Amusement Co. v. Martin (S.C. 1960) 236 S.C. 558, 115 S.E.2d 273, appeal dismissed, certiorari denied 81 S.Ct. 1914, 367 U.S. 904, 6 L.Ed.2d 1248.

This section is constitutional; it is not in violation of SC Const Art 1, Section 5 (now Art 1, Section 3) or US Const., Amend. 14, because it does not apply to corporations. Xepapas v. Richardson (S.C. 1929) 149 S.C. 52, 146 S.E. 686.

State has power to provide a weekly respite from all labor and to set one day of week apart as day of rest, repose, recreation, and tranquility. Braunfeld v. Brown, U.S.Pa.1961, 81 S.Ct. 1144, 366 U.S. 599, 6 L.Ed.2d 563, 17 O.O.2d 241, for additional opinion, see 81 S.Ct. 1153, 366 U.S. 420, 6 L.Ed.2d 393, 17 O.O.2d 280, dissenting opinion 81 S.Ct. 1218, 366 U.S. 420, 6 L.Ed.2d 393, 17 O.O.2d 343, rehearing denied 82 S.Ct. 22, 368 U.S. 869, 7 L.Ed.2d 70.

3. Enjoining enforcement by equity

Since corporations act through individuals, it was reasonable for the legislature to conclude that the prohibitions of the statute could be accomplished by directing criminal responsibility against all persons, which would include those employed by corporations. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270. Constitutional Law 3334; Sunday 2

Since the application of this section to persons and not corporations bears a reasonable and substantial relation to the legislative purpose and applies alike to all within the class, the Equal Protection Clause of the United States and South Carolina Constitutions is not violated. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

This section being constitutional, its enforcement cannot be enjoined under exception to rule that equity will not restrain criminal prosecution in absence of pending equity suit between same parties to try same right in issue. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610. Injunction 1199; Injunction 1379

Since this section is a valid enactment, equity cannot grant injunction restraining sheriff and constable from attempting to enforce its provisions to prevent sale of gasoline and motor oil on Sunday. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750.

4. Application to corporations, officers and agents

The statute imposes criminal responsibility on the person who actually performs the work or sells the prohibited item, but does not apply to corporations. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

A principal cannot escape liability for the negligent act of his agent by pleading that the act was done on Sunday. Rosamond v. Lucas‑Kidd Motor Co. (S.C. 1937) 182 S.C. 331, 189 S.E. 641.

This section does not apply to corporations, but it does apply to officers, agents, servants and employees thereof. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610. Corporations And Business Organizations 2615

While corporations cannot be indicted and punished under this section, their officers, agents and servants who violate the statute are subject to prosecution thereunder. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750. Corporations And Business Organizations 1947

5. Burden of proof and evidence

The conviction of the manager of a store was sustained by evidence that the store was open for business on the Sunday in question for the sale of practically any item of merchandise, under a plan, inferentially, devised by the management, whereby sales were made in violation of the law. State v. Johnson (S.C. 1970) 255 S.C. 14, 176 S.E.2d 575.

When the State proved that the defendant engaged in worldly work, labor or business of his ordinary calling on Sunday, a prima facie case was made out, which cast upon the defendant the burden of showing, either from cross‑examination of the State’s witnesses or from testimony of his own, that his work came within the exceptions of the statute. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270. Sunday 29(3)

The fact that the indictment alleged the offense in the words of the statute did not alter the rule as to the burden of proof where proof of the negative allegation was unnecessary to make out the State’s prima facie case. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

6. Works of necessity or charity, generally

Necessity is an elastic term. Work of necessity does not mean that which is indispensable, but it means something more than that which is merely needful or desirable. It is impossible to state with exactness the degree or inconvenience which would amount to necessity because of the various factors that might be considered in determining the question; a work of necessity means labor reasonably necessary for the worker to perform to save himself from some unforeseen or irreparable injury or loss, or necessary for the welfare of the community in which he resides, viewed in the light of the facts and circumstances existing at the time. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

Work of necessity has been excepted in this State from the statutory prohibition of Sunday work at least since 1691. Thus, under this section work is permitted on Sunday if it is a work of necessity or charity and, in the case of a merchant, any sale made in connection therewith is lawful if the items sold are necessary to the performance of such work. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

Guilt or innocence of any person charged with a violation of this section depends on facts and circumstances of each case, since works of necessity or charity are excepted therefrom. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750. Sunday 7

7. Particular activities as prohibited or permitted as necessary

A proper construction of this section permits one to operate his commercial establishment on Sunday (1) if the only items sold or offered for sale are specifically permitted by Code 1962 Section 64‑2.1; or (2), if not enumerated in Code 1962 Section 64‑2.1, the items sold or offered for sale constitute a part of a work of necessity or charity. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

One over fifteen years of age who engages in game of golf as professional or instructor, or in the work of caddie for compensation, or owns, keeps, or maintains any golf links or course as his business on Sunday violates this section. Palmetto Golf Club v. Robinson (S.C. 1928) 143 S.C. 347, 141 S.E. 610.

The sale of ice cream and cigars cannot be held, as a matter of law, to be an act of charity, even when the profits of such sale are devoted to charitable institutions. Oliveros v. Henderson (S.C. 1921) 116 S.C. 77, 106 S.E. 855.

The continuance on Sunday of ordinary sales or deliveries of ice or fresh meat is not a “work of necessity” in a town within the exception of the Sunday law. State v. James (S.C. 1908) 81 S.C. 197, 62 S.E. 214, 128 Am.St.Rep. 902, 16 Am.Ann.Cas. 277. Sunday 7

If this section is held to prohibit an operator or messenger from delivering ordinary social and business telegraphic messages on Sunday, it would have no application to a message which falls within the excepted classes as a work of necessity or charity because it relates to sickness and approaching death of a relative. Smith v. Western Union Tel. Co. (S.C. 1905) 72 S.C. 116, 51 S.E. 537.

Violation of this section does not render required publication of a legal notice in a newspaper issued on the Sabbath illegal and invalid. Eason v. Witcofskey (S.C. 1888) 29 S.C. 239, 7 S.E. 291.

8. —— Sale of gasoline

In action brought by service station owners against oil company, challenging lease requirements that they remain open 24 hours a day, requirement that dealers operate station on 24‑hour schedule did not violate South Carolina Blue Law, under Section 53‑1‑5, where dealers did not oppose working on Sunday but, rather, opposed being forced to operate during unprofitable hours; the 24‑hour provision, as it related to Sunday operation of service stations, was neither illegal nor against public policy of South Carolina since operating a service station falls within exception to the Blue Laws, as specified in Section 53‑1‑40. Wingard v. Exxon Co., U.S.A., 1992, 819 F.Supp. 497.

Sale of gasoline is not a work of necessity within the provisions of this section. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750. Sunday 7

Where the act adopted by the General Assembly permitting sale of gasoline and motor oils on Sunday was vetoed by the Governor, the failure of the General Assembly to pass the proposed legislation over the Governor’s veto should be regarded as evidence that the General Assembly intended that Sunday statutes should remain in full force. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750.

The burden of showing that sale of gasoline or motor oil is work of necessity or charity rests on the seller. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750. Sunday 7

**SECTION 53‑1‑50.** Exceptions to prohibition on Sunday work.

 Section 53‑1‑40 does not apply to the following:

 (1) The sale of food needs, ice, or soft drinks.

 (2) The sale of tobacco and related products.

 (3) The operation of radio or television stations nor to the printing, publication, and distribution of newspapers or weekly magazines, nor to the sale of newspapers, books, and magazines.

 (4) The operation of public utilities or sales usual or incidental thereto.

 (5) The transportation by air, land, or water of persons or property, nor to the sale or delivery of heating, cooling, refrigerating, or motor fuels, oils, or gases, or the purchase or installation of repair parts or accessories for immediate use in cases of emergency in connection with motor vehicles, boats, bicycles, aircrafts, or heating, cooling, or refrigerating systems, nor to the cleaning of motor vehicles.

 (6) The providing of medical services and supplies, nor to the sale of drugs, medicine, hygenic supplies, surgical supplies, and all other services and supplies related thereto.

 (7) The operation of public lodging or eating places, including food caterers.

 (8) Janitorial, custodial, and like services.

 (9) Funeral homes and cemeteries.

 (10) The sale of novelties, souvenirs, paper products, educational supplies, cameras, film, flash bulbs and cubes, batteries, baby supplies, hosiery and undergarments, flowers, plants, seeds, and shrubs.

 (11) The sale of art and craft objects at arts or craft exhibitions held pursuant to Section 53‑1‑10 provided that each art or craft object shown or sold has been designed by and is the original work of artisans present at the exhibition.

 (12) Exhibition of noncommercial real property and mobile homes.

 (13) The providing of any service, product, or other thing by means of a mechanical device not requiring the labor of any person.

 (14) The sale or rental of swimming, fishing, and boating equipment.

 (15) Any farming operations necessary for the preservation of agricultural commodities.

 (16) Light bulbs or fluorescent tubes.

HISTORY: 1962 Code Section 64‑2.1; 1962 (52) 2134; 1983 Act No. 121 Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, this section has been reprinted to correct a typographical error.

Editor’s Note

Section 4 of 1983 Act No. 121, effective June 16, 1983, provides as follows:

“Nothing in this act shall be construed to affect or in any way repeal the provisions of Chapters 11, 13, and 15 of Title 52 of the 1976 Code.”

LIBRARY REFERENCES

83 C.J.S., Sunday Section 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 4, Labor and Business.

S.C. Jur. Blue Laws Section 5, Sales.

S.C. Jur. Blue Laws Section 12, Works of Necessity or Charity.

S.C. Jur. Blue Laws Section 15, Specific Exceptions to Prohibitions of Sunday Work and Sales.

S.C. Jur. Blue Laws Section 24, Equal Protection.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

S.C. Jur. Hotels, Motels and Other Lodgings Section 12, Availability of Services.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

Williston on Contracts Section 14:10, Excepted Activities; Works of Necessity or Charity, Provision of Emergency Services and the Trend Toward Broadening Permitted Activities.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Equal Protection; Blue Laws. 31 S.C. L. Rev. 25.

Attorney General’s Opinions

No provision of state’s blue laws authorize sale or rental of videos on Sunday prior to 130 p.m. While certain videos may be sold under “educational supplies” provision of Section 53‑1‑50, determination of what videos would qualify must be made on case‑by‑case basis. 1990 Op Atty Gen No. 90‑25.

Under Blue Laws exhibition of mobile homes on Sundays allowed; but sale or offering to sell mobile homes on Sundays prohibited. Signing contract for sale on Sunday would also violate Blue Laws. 1984 Op Atty Gen, No. 84‑10, p. 39.

Synthetic fireplace logs may be sold on Sunday since they are a form of heating fuel. 1976‑77 Op Atty Gen, No 77‑12, p 23.

As long as the primary function of a store is to sell groceries, the store would not constitute an “eating place” within the exception of Section 64‑2.1 [1976 Code Section 53‑1‑50]. 1976‑77 Op Atty Gen, No 77‑13, p 23.

A grocery store may not employ or use on a gratuity basis more than three (3) persons at any one time when operating on Sunday, as such would be outside the scope of Section 64‑2.1 [1976 Code Section 53‑1‑50]. 1976‑77 Op Atty Gen, No 77‑54, p 56.

A grocery store may not hire more than three people on Sunday, even though the store contains a delicatessen, as such would violate the South Carolina Blue Laws. 1976‑77 Op Atty Gen, No 77‑152, p 128.

The terminology “emergency food needs,” does not render unconstitutional that portion of this section where it appears as a violation of the due process clauses of the Federal and State Constitutions. 1965‑66 Op Atty Gen, No 2081, p 176.

The “emergency food needs” excepted from the prohibition against Sunday sales means all items of nourishment intended for human consumption which are really needed by the purchaser, and which must be purchased on Sunday because of some unforeseen circumstances. 1965‑66 Op Atty Gen, No 2081, p 176.

NOTES OF DECISIONS

In general 1

1. In general

The statute permitting grocery stores to do business on Sunday, provided that three or less employees are needed to operate the store, does not violate the constitutional right to equal protection of the laws, even though larger grocery stores that cannot be operated by three or less employees are prohibited from doing business; by limiting the workers to three, the statute insures that the day of rest is extended to the maximum number of citizens while at the same time making necessary food items available. State v. Smith (S.C. 1978) 271 S.C. 317, 247 S.E.2d 331.

In a prosecution for violation of the Sunday blue laws that was brought against the manager of a supermarket and delicatessen who operated the store on a Sunday, employing six people, three of whom worked in the delicatessen, the trial court did not instruct the jury on the facts by instructing them that the delicatessen was not to be considered as a separate business, where the evidence established that the delicatessen operation was a part of the overall store operation such that the jury would not have been warranted in finding that the delicatessen was a separate business operation. State v. Smith (S.C. 1978) 271 S.C. 317, 247 S.E.2d 331.

The enumeration in this section of certain work which might be performed and specific items which may be sold on Sunday is a legislative declaration that such work and sales, in any event, should be considered necessary. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

**SECTION 53‑1‑60.** Sale of certain items on Sunday prohibited.

 The sale or offer to sell the following items on Sunday is prohibited: Clothing and clothing accessories (except those which qualify as swimwear, novelties, souvenirs, hosiery, or undergarments); housewares, china, glassware, and kitchenware; home, business and office furnishings, and appliances; tools, paints, hardware, building supplies, and lumber; jewelry, silverware, watches, clocks, luggage, musical instruments, recorders, recordings, radios, television sets, phonographs, record players or so‑called hi‑fi or stereo sets, or equipment; sporting goods (except when sold on premises where sporting events and recreational facilities are permitted); yard or piece goods; automobiles, trucks, and trailers. No inference shall arise from the foregoing enumeration that either the sale or the offering for sale on Sunday of items or articles not mentioned is permitted.

HISTORY: 1962 Code Section 64‑2.2; 1962 (52) 2134; 1983 Act No. 121 Section 3.

Editor’s Note

Section 4 of 1983 Act No. 121, effective June 16, 1983 provides as follows:

“Nothing in this act shall be construed to affect or in any way repeal the provisions of Chapters 11, 13, and 15 of Title 52 of the 1976 Code.”

LIBRARY REFERENCES

83 C.J.S., Sunday Section 15.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 4, Labor and Business.

S.C. Jur. Blue Laws Section 5, Sales.

S.C. Jur. Blue Laws Section 12, Works of Necessity or Charity.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

United States Supreme Court Annotations

Establishment and free exercise of religion clauses of Federal Constitution’s First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

Attorney General’s Opinions

No provision of state’s blue laws authorize sale or rental of videos on Sunday prior to 130 p.m. While certain videos may be sold under “educational supplies” provision of Section 53‑1‑50, determination of what videos would qualify must be made on case‑by‑case basis. 1990 Op Atty Gen No. 90‑25.

This section prohibits the sale of fishing tackle, hooks, lines, or sinkers. 1966‑67 Op Atty Gen, No 2270, p 83.

Under the State’s blue law provisions, if a sale or operation is not specifically excepted or authorized, such as pursuant to Section 53‑1‑50 or any other statute authorizing an exception, it is not permitted prior to 1:30 p.m. on Sunday. 1992 Op Atty Gen No. 92‑18.

NOTES OF DECISIONS

In general 1

1. In general

“Novelties” and “souvenirs” are terms of common usage in the business world, and business people of ordinary intelligence in the position of the defendant would be able to know what exceptions are meant by the terms, either as a matter of ordinary commercial knowledge or upon reasonable investigation. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

This section is not so vague as to render it unconstitutional under the Due Process Clause of the Federal and State Constitutions; there is no necessity to guess at this section’s [Code 1962 Section 64‑2.2] meaning in order to determine what conduct it makes criminal. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

State has power to provide a weekly respite from all labor and to set one day of week apart as day of rest, repose, recreation, and tranquility. Braunfeld v. Brown, U.S.Pa.1961, 81 S.Ct. 1144, 366 U.S. 599, 6 L.Ed.2d 563, 17 O.O.2d 241, for additional opinion, see 81 S.Ct. 1153, 366 U.S. 420, 6 L.Ed.2d 393, 17 O.O.2d 280, dissenting opinion 81 S.Ct. 1218, 366 U.S. 420, 6 L.Ed.2d 393, 17 O.O.2d 343, rehearing denied 82 S.Ct. 22, 368 U.S. 869, 7 L.Ed.2d 70.

**SECTION 53‑1‑70.** Penalties for violating prohibition on Sunday work.

 A violation of any of the provisions of Section 53‑1‑40 shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars in the case of the first offense, and by a fine of not less than one hundred dollars nor more than five hundred dollars for each and every subsequent offense. Each separate sale, offer or attempt to sell on Sunday, and each Sunday a person is engaged in other work, labor or business in violation of Section 53‑1‑40, or employs others to be so engaged, shall constitute a separate offense.

HISTORY: 1962 Code Section 64‑2.3; 1962 (52) 2134.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 23.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 82:231, Time Off Statutes.

United States Supreme Court Annotations

Establishment and free exercise of religion clauses of Federal Constitution’s First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

NOTES OF DECISIONS

In general 1

1. In general

This statutory fine does not constitute cruel and unusual punishment within the prohibition of the Eighth Amendment to the Federal Constitution. Whitney Stores, Inc. v. Summerford (D.C.S.C. 1968) 280 F.Supp. 406, affirmed 89 S.Ct. 44, 393 U.S. 9, 21 L.Ed.2d 9. Sentencing And Punishment 1560

This section applies to the entire class of natural persons and directs the same penalties under similar circumstances against all alike. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

**SECTION 53‑1‑80.** Sunday work declared public nuisance; injunctive relief; time off to attend church.

 The doing of any worldly work or labor, business of his ordinary calling, or the selling or offering for sale of any goods, wares or merchandise contrary to Section 53‑1‑40 is declared to be a public nuisance and any State, county or municipal law‑enforcement officer may apply to any court of competent jurisdiction for and may obtain an injunction restraining such operation, work, labor, sale or offering for sale. Provided, that any employee in a retail store where there are more than three employees shall upon request of said employee be granted time off to attend service allowing one hour for preparing to go and traveling to church and one hour after service for returning therefrom.

HISTORY: 1962 Code Section 64‑2.4; 1962 (52) 2134.

CROSS REFERENCES

Temporary injunction in respect to abatement of nuisances, see Section 15‑43‑30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 22, Establishment Clause.

S.C. Jur. Public Nuisance Section 13, Sunday Work.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

United States Supreme Court Annotations

Establishment and free exercise of religion clauses of Federal Constitution’s First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

NOTES OF DECISIONS

In general 1

1. In general

Where a large portion of the sale area of the store was sublet by the corporation, but it retained and operated the clothing, magazine, and alcoholic beverage departments, and where the record sustained the inference that the corporation determined the store hours, whether the store would open for business on Sunday, and the policies which governed the determination of the various items which were permitted to be sold on Sunday, the injunction was properly granted against the corporation. Whitney Trading Corp. v. McNair (S.C. 1970) 255 S.C. 8, 176 S.E.2d 572. Injunction 1766

There is a complete failure to show the necessary element of intentional or purposeful discrimination in enforcement where the evidence simply shows that there have been other violations of the Sunday Closing Law in the area and over the State of South Carolina, for which prosecutions were not made. Whitney Trading Corp. v. McNair (S.C. 1970) 255 S.C. 8, 176 S.E.2d 572.

Where the lower court found that the corporation was engaging in an attempt to evade the Sunday Closing Laws and had sold merchandise over a period of many Sundays in violation thereof, the granting of injunctive relief under the provisions of this section was justified. Whitney Trading Corp. v. McNair (S.C. 1970) 255 S.C. 8, 176 S.E.2d 572.

Code 1962 Section 10‑1802 relating to houses of assignation and prostitution is wholly inapplicable to the conduct against which a sheriff seeks an injunction under this section. McLeod v. Whitney Stores, Inc. (S.C. 1967) 250 S.C. 273, 157 S.E.2d 254.

This section does not require or prohibit church attendance, but simply attempts to afford to employees who work in certain lawful businesses on Sunday the opportunity if they so desire to attend church services. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

**SECTION 53‑1‑90.** Prohibitions on Sunday work and sales shall not affect certain businesses.

 The provisions of Sections 53‑1‑40 to 53‑1‑80 shall not be applicable to or affect the carrying on of any business or the rendering of any service which was lawful on April 7, 1962.

HISTORY: 1962 Code Section 64‑2.5; 1962 (52) 2134.

**SECTION 53‑1‑100.** Operation of machine shops exempt from chapter; conscientious opposition to Sunday work.

 Notwithstanding any other provision of law, the operation of machine shops and rubber molding and plastic injection molding facilities shall be exempt from the provisions of this chapter. No person shall be required to work on Sunday who is conscientiously opposed to Sunday work. If any person refuses to work on Sunday because of conscientious or physical objections, he shall not jeopardize his seniority rights by such refusal or be discriminated against in any manner. Sunday work shall be compensated at a rate no less than that required by the Fair Labor Standards Act.

HISTORY: 1962 Code Section 64‑3; 1952 Code Section 64‑3; 1942 Code Section 1735; 1932 Code Section 1735; Cr. C. ‘22 Section 716; Cr. C. ‘12 Section 701; Cr. C. ‘02 Section 503; 1899 (23) 100; 1971 (57) 476; 1982 Act No. 353.

CROSS REFERENCES

Applicability of provisions of this section to employees who refuse to work for businesses operating after 1:30 p.m. on Sunday, see Section 53‑1‑5.

Applicability of provisions of this section to employees who refuse to work on Sundays within counties which are exempt from this chapter, see Section 53‑1‑150.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

S.C. Jur. Master and Servant Section 48, Sunday Pay.

Treatises and Practice Aids

Employment Coordinator Compensation Section 18:230, Minimum Rate for Certain Sunday Work.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

Guide to Employment Law and Regulation 2d Section 61:7, Minimum Wage Law.

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

Enactment of this section was legislative recognition that Code 1962 Section 64‑2 did not contemplate punishment of corporations for violation of Sunday laws, and since the law as declared in Code 1962 Section 64‑2 applied only to persons from the age of fifteen years and upwards, corporations could not be penalized under such section for working or selling goods on Sunday. Charleston Oil Co. v. Poulnot (S.C. 1928) 143 S.C. 283, 141 S.E. 454, 60 A.L.R. 750.

**SECTION 53‑1‑110.** Manufacture or finishing of textile products exempt from chapter; conscientious opposition to Sunday work.

 Notwithstanding any other provision of law, the manufacture and finishing of textile products shall be exempt from the provisions of Chapter 1, Title 53, as amended. Provided, however, that no person shall be required to work on Sunday who is conscientiously opposed to Sunday work. If any person refuses to work on Sunday because of conscientious or physical objections, he shall not jeopardize his seniority rights by such refusal or be discriminated against in any manner. Sunday work shall be compensated at a rate no less than that required by the Fair Labor Standards Act.

HISTORY: 1962 Code Section 64‑4; 1952 Code Section 64‑4; 1942 Code Section 1735‑1; 1937 (40) 528; 1939 (41) 313; 1953 (48) 241; 1954 (48) 1717; 1971 (57) 476.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 10.

RESEARCH REFERENCES

ALR Library

37 ALR 5th 349 , Judicial Construction and Application of State Legislation Prohibiting Religious Discrimination in Employment.

Encyclopedias

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

Treatises and Practice Aids

Employment Coordinator Compensation Section 18:230, Minimum Rate for Certain Sunday Work.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

Guide to Employment Law and Regulation 2d Section 61:7, Minimum Wage Law.

NOTES OF DECISIONS

In general 1

1. In general

The clear and unambiguous language of Section 53‑1‑110 exempted a textile manufacturer from the operation of Section 53‑1‑150, which prohibits discrimination against employees whose regular day of worship is Saturday, and thus an action by a former textile employee, who was discharged because of his unexcused absences on Saturdays, was properly dismissed. Holley v. Mount Vernon Mills, Inc. (S.C. 1994) 312 S.C. 320, 440 S.E.2d 373. Civil Rights 1114

The 1954 amendment to this section did not repeal Section 53‑1‑30. Mullis v Celanese Corp. of America (1959) 234 SC 380, 108 SE2d 547, 37 CCH LC ¶65520 (ovrld on other grounds by Moyd v Johnson, 289 SC 482, 347 SE2d 97). Mullis v. Celanese Corp. of America (S.C. 1959) 234 S.C. 380, 108 S.E.2d 547.

Court’s opinion treats section prior to 1939 amendment exempting watchmen. Cooksey v. Beaumont Mfg. Co. (S.C. 1940) 194 S.C. 395, 9 S.E.2d 790.

**SECTION 53‑1‑120.** Employment of children in mercantile or manufacturing establishments on Sunday; conscientious opposition to Sunday work; “mercantile establishment” defined.

 It shall be unlawful for any person to employ, require or permit the employment of children to work or labor in any mercantile establishment or manufacturing establishment on Sunday. Provided, that no employee shall be required to work on Sunday, who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious or physical objections he or she shall not jeopardize his or her seniority rights by such refusal or be discriminated against in any other manner. This section shall not apply to those manufacturing establishments described in Section 53‑1‑130.

 The term”mercantile establishment” shall be construed to mean any place where goods or wares are offered or exposed for sale, except cafeterias and restaurants. The term “manufacturing establishment” shall be construed to mean any plant or place of business engaged in manufacturing. The Commissioner of Labor and factory inspectors are charged with the enforcement of this section. The commission and his duly authorized agents or inspectors shall have free access to any place where children are employed for the purpose of enforcing compliance with the provisions of this section. Any person who hinders or obstructs the commissioner, or any of his duly authorized agents or inspectors in the performance of their duties shall be guilty of violating this section. Any person violating any of the provisions hereof shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty‑five dollars, nor more than one hundred dollars, or imprisonment not to exceed thirty days for each offense.

HISTORY: 1962 Code Section 64‑5; 1952 Code Section 64‑5; 1942 Code Section 1735‑2; 1934 (38) 1454; 1941 (42) 119; 1953 (48) 242; 1973 (58) 372.

CROSS REFERENCES

Child labor, see Sections 41‑13‑5 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 7, Sunday Employment of Children.

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

Treatises and Practice Aids

Employment Coordinator Compensation Section 25:84, Prohibitions.

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

United States Supreme Court Annotations

Establishment and free exercise of religion clauses of Federal Constitution’s First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L Ed 2d 752.

Attorney General’s Opinions

Women may work on Sunday in mercantile establishments. 1967‑68 Op Atty Gen, No 2504, p 185.

Service stations for motor vehicles that offer or expose for sale gasoline and motor oils are mercantile establishments and prohibited by law from permitting the employment of women or children to work or labor in such establishment on Sunday. 1965‑66 Op Atty Gen, No 2078, p 173.

**SECTION 53‑1‑130.** Exceptions for manufacturing plants requiring continuous operation.

 The provisions of Sections 53‑1‑5 through 53‑1‑120 do not apply to manufacturing establishments or to research and development operations of any person, including the support services necessary for these operations, or to the employees of these operations when these establishments in the nature of their business involve manufacturing processes requiring continuous and uninterrupted operation or which for economical operation must engage in a continuous process nor do the provisions apply to maintenance, repair, and other service personnel of any manufacturing establishment.

HISTORY: 1962 Code Section 64‑6; 1952 Code Section 64‑6; 1950 (46) 2260; 1966 (54) 2182; 1983 Act No. 121 Section 6; 1985 Act No. 86 Section 2.

Editor’s Note

Section 4 of 1983 Act No. 121, effective June 16, 1983, provides as follows:

“Nothing in this act shall be construed to affect or in anyway repeal the provisions of Chapters 11, 13, and 15 of Title 52 of the 1976 Code.”

CROSS REFERENCES

Definition of “manufacturing of bakery products”, see Section 53‑1‑140.

LIBRARY REFERENCES

83 C.J.S., Sunday Section 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

S.C. Jur. Master and Servant Section 48, Sunday Pay.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:8, Maximum Hour Law.

NOTES OF DECISIONS

In general 1

1. In general

This section does not offend the equal protection clauses and is not based upon an arbitrary or unreasonable classification, nor is its special legislation repugnant to Art 3, Section 34, subdiv. IX of the State Constitution. Mullis v Celanese Corp. of America (1959) 234 SC 380, 108 SE2d 547, 37 CCH LC ¶65520 (ovrld on other grounds by Moyd v Johnson, 289 SC 482, 347 SE2d 97) as stated in Rose v Thrash, 291 SC 459, 354 SE2d 378.

The 1954 amendment to Code 1962 Section 64‑4 did not repeal this section. Mullis v Celanese Corp. of America (1959) 234 SC 380, 108 SE2d 547, 37 CCH LC ¶65520 (ovrld on other grounds by Moyd v Johnson, 289 SC 482, 347 SE2d 97) as stated in Rose v Thrash, 291 SC 459, 354 SE2d 378.

Legislative background of this section conclusively shows that the General Assembly recognized the manufacture of cellulose acetate filament as requiring continuous and uninterrupted operation, and that this section was designed to exempt such industries from the provisions of Code 1962 Sections 64‑2 through 64‑5. Mullis v Celanese Corp. of America (1959) 234 SC 380, 108 SE2d 547, 37 CCH LC ¶65520 (ovrld on other grounds by Moyd v Johnson, 289 SC 482, 347 SE2d 97) as stated in Rose v Thrash, 291 SC 459, 354 SE2d 378.

Test of the applicability of this section is whether, within the contemplation of the General Assembly in its enactment, the manufacture involves chemical processes requiring continuous operation. Mullis v Celanese Corp. of America (1959) 234 SC 380, 108 SE2d 547, 37 CCH LC ¶65520 (ovrld on other grounds by Moyd v Johnson, 289 SC 482, 347 SE2d 97). Rose v Thrash, 291 SC 459, 354 SE2d 378.

**SECTION 53‑1‑140.** Manufacturing of bakery products as requiring continuous operation.

 For the purpose of this chapter, the “manufacturing of bakery products” is defined as being a chemical manufacturing process requiring continuous, uninterrupted operation.

HISTORY: 1962 Code Section 64‑7; 1963 (53) 165.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 17, Various Other Statutory Exceptions.

S.C. Jur. Master and Servant Section 48, Sunday Pay.

Attorney General’s Opinions

Under Blue Laws exhibition of mobile homes on Sundays allowed; but sale or offering to sell mobile homes on Sundays prohibited. Signing contract for sale on Sunday would also violate Blue Laws. 1984 Op Atty Gen, No. 84‑10, p. 39.

**SECTION 53‑1‑150.** Exemption of certain counties; rights of employees, lessees, and franchisees to refuse to work; discrimination against persons who worship on Saturday prohibited.

 (A) The General Assembly finds that certain areas of the State would benefit greatly from a complete exemption from Chapter 1 of Title 53. This benefit would be a result of an expanded tax base thereby reducing the burden placed on property owners through the property tax. Allowing the operation of establishments on Sunday in these areas also would reduce the property tax burden through additional accommodations tax revenue which allows these areas to provide necessary governmental service from these revenues.

 (B) The provisions of Chapter 1 of Title 53 do not apply to any county area, as defined in Section 6‑4‑5(1), which collects more than nine hundred thousand dollars in one fiscal year in revenues from the accommodations tax provided for in Section 12‑36‑2630(3) and imposed in Section 12‑36‑920(A). After a county area has collected more than nine hundred thousand dollars in one fiscal year in revenues from the accommodations tax provided for in Section 12‑36‑2630(3) and imposed in Section 12‑36‑920(A), the exclusion from the provisions of Chapter 1 of Title 53 will continue from year to year irrespective of whether revenue falls below nine hundred thousand dollars in subsequent years.

 (C) Any employee of any business which operates on Sunday under the provisions of this section has the option of refusing to work in accordance with Section 53‑1‑100. Any employer who dismisses or demotes an employee because he is a conscientious objector to Sunday work is subject to a civil penalty of treble the damages found by the court or the jury plus court costs and the employee’s attorney’s fees. The court may order the employer to rehire or reinstate the employee in the same position he was in prior to dismissal or demotion without forfeiture of compensation, rank, or grade.

 No proprietor of a retail establishment who is opposed to working on Sunday may be forced by his lessor or franchisor to open his establishment on Sunday nor may there be discrimination against persons whose regular day of worship is Saturday.

HISTORY: 1985 Act No. 86 Section 3; 1995 Act No. 134, Section 3, eff (became law without the Governor’s signature on June 13, 1995).

Editor’s Note

**SECTIONS 12‑35‑710 and 12‑35‑730 have been repealed, see Sections 12‑36‑920 and 6‑4‑20 respectively.**

Effect of Amendment

The 1995 amendment, in subsection (B), changed the statutory references and added the last sentence.

LIBRARY REFERENCES

83 C.J.S., Sunday Sections 3‑12.

RESEARCH REFERENCES

ALR Library

37 ALR 5th 349 , Judicial Construction and Application of State Legislation Prohibiting Religious Discrimination in Employment.

Encyclopedias

S.C. Jur. Blue Laws Section 13, After 1:30 p.m. on Sunday.

S.C. Jur. Blue Laws Section 14, Certain Counties Exempt.

S.C. Jur. Blue Laws Section 16, Exceptions to the Otherwise Lawful Sunday Employment of Children.

S.C. Jur. Blue Laws Section 22, Establishment Clause.

S.C. Jur. Constitutional Law Section 48, Special Applications‑Sunday Closing Laws or “Blue Laws”.

S.C. Jur. Master and Servant Section 48, Sunday Pay.

LAW REVIEW AND JOURNAL COMMENTARIES

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

Attorney General’s Opinions

A county area must collect more than $900,000.00 in accommodations taxes on an annual basis for the exemption to the “Blue Laws” provisions of Section 53‑1‑150(B) to apply in that county area. 1994 Op Atty Gen, No. 94‑70, p. 147.

NOTES OF DECISIONS

In general 1

1. In general

The clear and unambiguous language of Section 53‑1‑110 exempted a textile manufacturer from the operation of Section 53‑1‑150, which prohibits discrimination against employees whose regular day of worship is Saturday, and thus an action by a former textile employee, who was discharged because of his unexcused absences on Saturdays, was properly dismissed. Holley v. Mount Vernon Mills, Inc. (S.C. 1994) 312 S.C. 320, 440 S.E.2d 373. Civil Rights 1114

**SECTION 53‑1‑160.** Suspension of Sunday work prohibitions.

 (A) In addition to other exemptions provided by statute, the county governing body may by ordinance suspend the application of the Sunday work prohibitions provided in Chapter 1 of Title 53 in a county which does not qualify for the exemption provided in Section 53‑1‑150. If the county governing body suspends the application of Sunday work prohibitions, any employee of any business which operates on Sunday under the provisions of this section has the option of refusing to work in accordance with Section 53‑1‑100. Any employer who dismisses or demotes an employee because he is a conscientious objector to Sunday work is subject to a civil penalty of treble the damages found by the court or the jury plus court costs and the employee’s attorney’s fees. The court may order the employer to rehire or reinstate the employee in the same position he was in prior to the dismissal or demotion without forfeiture of compensation, rank, or grade. No proprietor of a retail establishment who is opposed to working on Sunday may be forced by his lessor or franchisor to open his establishment on Sunday nor may there be discrimination against persons whose regular day of worship is Saturday.

 (B) In addition to other exemptions provided by statute, the Sunday work prohibitions provided in Chapter 1 of Title 53 may only be continued:

 (1) in a county which does not qualify for the exemption provided in Section 53‑1‑150 within ninety days before the 1996 general election; or

 (2) in a county in which the county governing body has not suspended application of the Sunday work prohibitions by ordinance as provided in subsection (A) within ninety days before the 1996 general election; if a majority of the qualified electors of that county voting in a referendum at the time of the 1996 general election vote in favor of the continued prohibition on Sunday work.

 (C) The county election commission shall place the question in subsection (G) on the ballot in November 1996 in a county:

 (1) which does not qualify for the exemption provided in Section 53‑1‑150 within ninety days before the 1996 general election; or

 (2) in which the county governing body has not suspended application of the Sunday work prohibitions by ordinance as provided in subsection (A) within ninety days before the 1996 general election.

 (D) The state election laws shall apply to the referendum, mutatis mutandis. The State Board of Canvassers shall publish the results of the referendum within each county and certify them to the Secretary of State.

 (E) If a county in which the referendum is to be held qualifies for the exemption provided in Section 53‑1‑150 after September 1, 1996, and before November 5, 1996, the county governing body shall direct the county election commission not to place the question on the ballot and not to hold the referendum.

 (F) If the result of this referendum is not in favor of a continuation of the prohibition on Sunday work within the county, Chapter 1 of Title 53 shall not apply within such county after the result of the referendum is certified to the Secretary of State. Any employee of any business which operates on Sunday under the provisions of this section has the option of refusing to work in accordance with Section 53‑1‑100. Any employer who dismisses or demotes an employee because he is a conscientious objector to Sunday work is subject to a civil penalty of treble the damages found by the court or the jury plus court costs and the employee’s attorney’s fees. The court may order the employer to rehire or reinstate the employee in the same position he was in prior to the dismissal or demotion without forfeiture of compensation, rank, or grade. No proprietor of a retail establishment who is opposed to working on Sunday may be forced by his lessor or franchisor to open his establishment on Sunday nor may there be discrimination against persons whose regular day of worship is Saturday.

 (G) The question put before the voters shall read as follows:

 “Shall the prohibition on Sunday work continue in this county subject to an employee’s right to elect not to work on Sunday if the prohibition is not continued after certification of the result of this referendum to the Secretary of State?

Yes []

No []”

 (H) Notwithstanding the provisions of subsections (A) through (G), the referendum provided by subsection (B) must be held in a county which qualified for the exemption provided in Section 53‑1‑150 after May 8, 1985.

HISTORY: 1995 Act No. 134, Section 4, eff (became law without the Governor’s signature on June 13, 1995).