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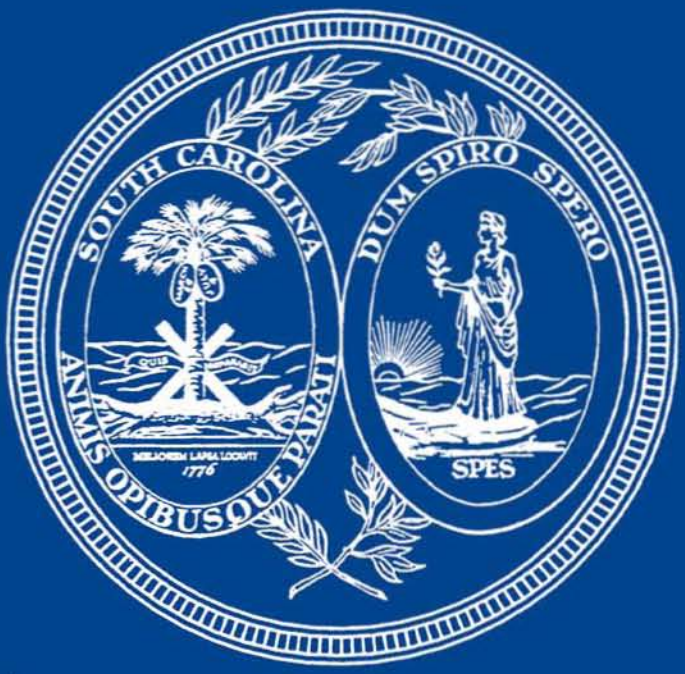

South Carolina Department of
Labor, Licensing and Regulation

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CHAPTER 1.

GENERAL PROVISIONS

SECTION 41-1-10. Employers shall post certain labor laws.

Every employer shall keep posted in a conspicuous place in every room where five or more persons are employed a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Director of the Department of Labor, Licensing, and Regulation or his designee shall furnish the printed form of such notice upon request.

SECTION 41-1-15. Establishment of drug prevention program in workplace; confidentiality of information concerning test results.

(A) Notwithstanding any other provision of the law, an employer may establish a drug prevention program in the workplace pursuant to Section 38-73-500(B) which shall include:

(1) a substance abuse policy statement that balances the employer's respect for individuals with the need to maintain a safe, productive, and drug-free environment. The intent of the policy shall be to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified workplace; and

(2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier.

(B) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding.

(C) Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

(1) the name of the person who is authorized to obtain the information;

(2) the purpose of the disclosure;

(3) the precise information to be disclosed;

(4) the duration of the consent; and

(5) the signature of the person authorizing release of the information.

(D) Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

SECTION 41-1-20. Unlawful discrimination against union members.

Every person who shall discharge or discriminate in the payment of wages against any person because of his membership in a labor organization shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten nor more than fifty dollars or be imprisoned not less than ten nor more than thirty days.

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SECTION 41-1-40. Employers requiring notice from employee quitting work shall post notice of shutdown.

All employers of labor in this State requiring notice from any employee of the time such employee will quit work shall give notice to its employees of its purpose to quit work or shutdown by posting in each room of its building not less than two weeks in advance or the same length of time in advance as is required by it of its employees before they may quit work a printed notice of such purpose, stating the date of the beginning of the shutdown or cessation from work and the approximate length of time the continuous shutdown is to continue. But they are not required to do so when the shutdown is caused by reason of some unforeseen accident to machinery or by some act of God or of the public enemy.

Any employer of labor subject to the provisions of this section failing to post such notice in the manner herein provided, shall be subject to a fine of not exceeding five thousand dollars, upon conviction, and in addition thereto shall be liable to each and every one of his employees for such damages as such employee may suffer by reason of such failure to give such notice.

SECTION 41-1-50. Acceptance of payment from relief fund shall be no bar to action for damages.

When any person runs or operates what is usually called a relief department for his employees, the members of which are required or permitted to pay dues, fees, money or other compensation, by whatever name called, to be entitled to the benefit thereof upon the death or injury of the employee, a member of such relief department, such person so running or operating such department shall pay to the person entitled thereto the amount it was agreed the employee, his heirs or other beneficiary under such contract, should receive from such relief department. The acceptance of such amount shall not operate to estop or in any way bar the right of such employee or his personal representative from recovering damages of such person for personal injury or death caused by negligence of such person, his servants or agents, as provided by law and any contract or agreement to the contrary or any receipt or release given in consideration of the payment of such sum, is and shall be null and void.

SECTION 41-1-60. Certain transactions between carriers or shippers and labor organizations prohibited; penalties.

(1) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways.

(3) It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in item (2) hereof.

(4) Any person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described in item (2) hereof shall be guilty of a misdemeanor and on conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for a period of not less than thirty days, nor more than one year, in the discretion of the court. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate and distinct offense.

SECTION 41-1-65. Employers granted immunity from liability for disclosure of information.

(A) As used in this section:

(1) "Employer" means any person, partnership, for profit or nonprofit corporation, limited liability corporation, the State and its political subdivisions and their agents that employ one or more employees. As used in this definition, "agent" means any former supervisor or the employer's designee.

(2) "Employee" means any person employed by an employer.

(3) "Evaluation" means a written employee evaluation which was conducted by the employer and signed by the employee, including any written employee response to the evaluation, before the employee's separation from the employer and of which the employee, upon written request, shall be given a copy.

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(4) "Former employee" means an individual who was previously employed by an employer.

(5) "Job performance" includes, but is not limited to, attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary actions.

(6) "Prospective employer" means any employer to which a prospective employee has made application, either oral or written, or forwarded a resume or other correspondence expressing an interest in employment.

(7) "Prospective employee" means any person who has made an application either oral or written or has sent a resume or other correspondence to a prospective employer indicating an interest in employment.

(B) Unless otherwise provided by law, an employer shall be immune from civil liability for the disclosure of an employee's or former employee's dates of employment, pay level, and wage history to a prospective employer.

(C) Unless otherwise provided by law, an employer who responds in writing to a written request concerning a current employee or former employee from a prospective employer of that employee shall be immune from civil liability for disclosure of the following information to which an employee or former employee may have access:

(1) written employee evaluations;

(2) official personnel notices that formally record the reasons for separation;

(3) whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and

(4) information about job performance.

(D) This protection and immunity shall not apply where an employer knowingly or recklessly releases or discloses false information.

SECTION 41-1-70. Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury.

Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.

Damages for dismissal are limited to no more than one year's salary or fifty-two weeks of wages based on a forty-hour week in the amount the employee was receiving at the time of receipt of the subpoena.

Damages for demotion are limited to the difference for one year between the salary or wages based on a forty-hour week which the employee received before the demotion and the amount he receives after the demotion.

SECTION 41-1-80. Prohibition against retaliation based upon employee's institution of, or participation in, proceedings under Workers' Compensation Law; civil actions.

No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding.

Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

Any employer shall have as an affirmative defense to this section the following: wilful or habitual tardiness or absence from work; being disorderly or intoxicated while at work; destruction of any of the employer's property; failure to meet established

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employer work standards; malingering; embezzlement or larceny of the employer's property; violating specific written company policy for which the action is a stated remedy of the violation.

The failure of an employer to continue to employ, either in employment or at the employee's previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.

The statute of limitations for actions under this section is one year.

SECTION 41-1-85. Personnel action based on use of tobacco products outside of workplace prohibited.

The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee.

SECTION 41-1-90. Requirement of notice that completion of training program does not guarantee employment.

Every employer in this State who requires prospective employees to complete a job training program conducted either by the employer or on behalf of the employer by an outside organization prior to consideration for employment shall give each prospective employee before beginning the training program a notice in the form prescribed by Section 41-1-100 if completion of the job training program does not guarantee the prospective employee regular employment on a permanent basis by the employer.

SECTION 41-1-100. Form of notice required by Section 41-1-90.

The notice required by Section 41-1-90 shall appear on any printed matter promoting the job training program and on every application for enrollment in the program in substantially the following form: "Notice. Completion of this job training program does not guarantee you regular employment on a permanent basis by the employer who requires you to complete the program."

SECTION 41-1-110. Conspicuous disclaimer of contract of employment created by handbook, personnel manual or other document issued by employer.

It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

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CHAPTER 3.

DEPARTMENT AND DIRECTOR OF LABOR, LICENSING, AND REGULATION

ARTICLE 1.

GENERAL PROVISIONS

SECTION 41-3-10. Division of Labor created under supervision of Department of Labor, Licensing, and Regulation; director; rules and regulations.

A Division of Labor is hereby created, established, and administered under the supervision and direction of the Department of Labor, Licensing, and Regulation. A director of the Department of Labor, Licensing, and Regulation must be appointed by the Governor pursuant to the provisions of Section 40-73-15. The director means the chief administrative officer of the Department of Labor, Licensing, and Regulation. The Division of Labor is authorized to promulgate regulations for the division, and it is the duty of the division to administer and enforce the regulations and direct all inspections and investigations except as otherwise provided.

SECTION 41-3-20. Repealed by 1993 Act No. 181, Section 1617(B), eff February 1, 1994.

SECTION 41-3-30. Employees.

The Director of Labor, Licensing, and Regulation, or his designee, pursuant to Section 40-73-15, may employ such personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized by the statute and for which funds have been authorized in the annual general appropriations act. The director or his designee may assign or transfer employees from one subdivision to another or may combine the clerical and inspection forces of two or more subdivisions, as he may consider necessary and advisable.

SECTION 41-3-40. Regulation of work of Subdivision of the Division of Labor.

The Director of Labor, Licensing, & Regulation, or his designee shall make regulations with reference to the work of the Subdivision of the Division of Labor and of the several subdivisions thereof as shall be necessarily properly to carry out the duties imposed upon the division.

SECTION 41-3-50. Inspections of work places, sites or areas.

The director of the department or his designee shall visit and inspect at reasonable hours, as often as practicable, all places, sites or areas where employment comes under the jurisdiction of the division to enforce the provisions of Chapters 1 through 25 of this Title.

SECTION 41-3-55. Determination of liability for violations at sites involving multiple employers or contractors.

At any construction site involving multiple employers or contractors, the department inspector when citing any such employer or contractor for a violation of any regulation or standard provided by law shall first determine which employer or contractor is in violation and such employer or contractor only shall be cited and held responsible for such violation.

SECTION 41-3-60. Enforcement of labor and employment laws; appointment and duties of inspectors and assistants.

The Director of the Department of Labor, Licensing, and Regulation or his designee shall enforce all laws of Chapters 1 through 25 of this Title in places, sites or areas, which come under his jurisdiction, and appoint such assistants and inspectors as necessary to carry out his duties. The duties of such assistants and inspectors shall be prescribed by the director which come under his jurisdiction.

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SECTION 41-3-70. Representatives of employer and employees may accompany inspectors.

A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Director of the Department of Labor, Licensing, and Regulation or his designee, his assistant or inspector during the physical inspection of any workplace for the purpose of aiding such inspection. No employee shall suffer any loss of wages or other benefits which would normally accrue to him because of his participation in the walk-around inspection under this section. Where there is no authorized representative, the director or his designee, his assistant or inspector shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

SECTION 41-3-80. Enforcement of Fair Labor Standards Act of 1938.

The Division of Labor may assist and cooperate with the wage and hour division and the children's bureau, United States Department of Labor, in the enforcement within this State of the Fair Labor Standards Act of 1938, adopted by the Congress of the United States, approved June 25, 1938, or as it may be hereafter amended and, subject to the regulations of the administration of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of this State applicable to the receipt and expenditure of moneys, may be reimbursed by such division or such bureau for the reasonable cost of such assistance and cooperation.

SECTION 41-3-100. Furnishing of blanks and forms.

All blanks and forms required by the Director of the Department of Labor, Licensing, and Regulation or his designee under provisions of Chapters 1 through 25 of this Title shall be furnished by the director or his designee.

SECTION 41-3-110. Powers of Director generally.

The Director of the Department of Labor, Licensing, and Regulation or his designee may subpoena witnesses, documents, take and preserve testimony, examine witnesses, administer oaths and, under proper restrictions, enter any public institution of the State or any factory, store, workshop, laundry, public eating house or mine and interrogate any person employed therein or connected therewith or the proper officers of a corporation or he may file a written or printed list of interrogatories and require full and complete answers to them to be returned, under oath, within fifteen days of the receipt of such list.

SECTION 41-3-120. Enforcement.

The Director of the Department of Labor, Licensing, and Regulation or his designee shall enforce the provisions of Chapters 1 through 25 of this title and prosecute all violations of law relating to those chapters before any court of competent jurisdiction.

SECTION 41-3-130. Solicitors and prosecuting attorneys shall prosecute violations.

The solicitor of the circuit or the prosecuting attorney of the city court, upon the request of the Director of the Department of Labor Licensing, and Regulation or his designee, or any of his assistants or deputies, shall prosecute any violation of law which it is the duty of the director or his designee to enforce.

SECTION 41-3-140. Penalties for impeding Director in performance of his duties.

Any person who shall willfully impede or prevent the Director of the Department of Labor, Licensing, and Regulation or his designee, his agents or assistants, in the free and full performance of his duties shall, upon conviction, be fined not less than one hundred dollars or more than one thousand dollars or be imprisoned for not less than thirty days or more than six months, or both.

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ARTICLE 5.

MIGRANT LABOR SUBDIVISION

SECTION 41-3-510. Migrant Labor subdivision established.

There is established within the Subdivision of the Division of Labor, the Migrant Labor subdivision.

SECTION 41-3-520. Promulgation of rules and regulations.

The Division of Labor may with the approval of the majority of the Migrant Farm Workers Commission promulgate, revoke, or modify rules and regulations implementing the recommendations of the Migrant Farm Workers Commission in safeguarding the health, safety, education and welfare of migrant or seasonal farm workers.

SECTION 41-3-530. Public hearing concerning rules and regulations; notice.

Prior to the promulgation, modification or revocation of any regulation pursuant to Section 41-3-520 and the Administrative Procedures Act, the Subdivision of the Division of Labor shall conduct a public hearing at which all interested persons shall be provided an opportunity to appear and present their comments either orally, written or both. Notice of such hearing shall be published in at least three newspapers, one of which has circulation in the upper section of the State, one which has circulation in the middle section of the State and one with circulation in the lower section of the State, once a week for three weeks. The notice shall contain the date, time, and place of the hearing, a brief description of the proposed regulation or the amendment or revocation of an existing rule and regulation.

SECTION 41-3-540. Contracts to provide migrant labor services; annual report of Director of Labor, Licensing, and Regulation to General Assembly.

The Director of the Department of Labor, Licensing, and Regulation or his designee is authorized to enter into contracts with other state agencies and other political subdivisions of the State to provide migrant labor services, and the Division of Labor shall enforce the regulations. Additionally, the director or his designee is authorized to enter into contracts with existing private agencies organized for the purpose of providing services to the migrant or seasonal farm workers and any newly organized private agency organized to provide services to the migrant or seasonal farm workers which are approved by the Migrant Farm Workers Commission. The director or his designee shall report annually to the General Assembly the activity of the Migrant Farm Workers Commission and the Migrant Labor Subdivision for the preceding fiscal year.

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ARTICLE 6.

CERTAIN TERMS DEEMED TO HAVE CERTAIN MEANINGS

SECTION 41-3-610. Commissioner of Labor to mean Director of Department of Labor, Licensing, and Regulation; Department of Labor to mean Division of Labor; division to mean subdivision; contested matters appealable to administrative law judge.

Wherever in any other chapter of Title 41 the term Commissioner of Labor appears or is used, it is considered to mean the Director of the Department of Labor, Licensing, and Regulation or his designee. Wherever in any other chapter of Title 41 the term Department of Labor appears or is used, it is considered to mean the Division of Labor, that is, a division of the Department of Labor, Licensing, and Regulation. Wherever in any other chapter of Title 41 the term division appears or is used with reference to a division of the former Department of Labor, it is considered to mean a subdivision of the Division of Labor. Any contested case or matter heard or decided by the former Commissioner of Labor, his designee, or any other employee of the former Department of Labor may be appealed to an administrative law judge as provided under Article 5 of Chapter 23 of Title 1.

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Title 41 - Labor and Employment

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 shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

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.

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.

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.

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.

SECTION 41-7-60. Applicability of right to work provisions.

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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.

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.

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.

SECTION 41-7-80. Penalties.

Any employer, labor organization or other person whomsoever who shall violate any provision of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment for not less than ten nor more than thirty days or by a fine of not less than ten nor more than one thousand dollars or by both in the discretion of the court.

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

Any person whose rights are adversely affected by any contract, agreement, assemblage or other act or thing done or threatened to be done and declared to be unlawful or prohibited by this chapter shall have the right to apply to any court having general equity jurisdiction for appropriate relief. The court, in any such proceeding, may grant and issue such restraining, and other, orders as may be appropriate, including an injunction restraining and enjoining the performance, continuance, maintenance or commission of any such contract, agreement, assemblage, act or thing, and may determine and award, as justice may require, any actual damages, costs and attorneys' fees which have been sustained or incurred by any party to the action, and, in the discretion of the court or jury, punitive damages in addition to the actual damages. The provisions of this section are cumulative and are in addition to all other remedies now or hereafter provided by law.

SECTION 41-7-100. Civil penalties; review and appeals.

(A) A person who violates the provisions of this chapter may be assessed by the Director of the Department of Labor, Licensing and Regulation a civil penalty of not more than one hundred dollars for each offense.

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(B) The director shall promulgate regulations establishing procedures for administrative review of civil penalties assessed under this chapter.

(C) A person aggrieved by a final action of the department may appeal the decision to the Administrative Law Judge Division in accordance with the Administrative Procedures Act and the rules of the Administrative Law Judge Division. Service of a petition requesting a review does not stay the department's decision pending completion of the appellate process.

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CHAPTER 10.

PAYMENT OF WAGES

SECTION 41-10-10. Definitions.

As used in this chapter:

(1) "Employer" means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

(2) "Wages" means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

SECTION 41-10-20. Applicability of chapter.

This chapter applies to all employers in South Carolina except that Section 41-10-30 does not apply to:

(1) employers of domestic labor in private homes.

(2) employers employing fewer than five employees at all times during the preceding twelve months.

SECTION 41-10-30. Notification to employees of wages and hours agreed upon; recordkeeping requirements; requirement of itemized statement of gross pay and deductions for each pay period.

(A) Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases.

(B) Every employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years.

(C) Every employer shall furnish each employee with an itemized statement showing his gross pay and the deductions made from his wages for each pay period.

SECTION 41-10-40. Medium of payment; deposit of wages to employee's credit; prohibition against deductions in absence of written notice; time and place of payment.

(A) Every employer in the State shall pay all wages due in lawful United States money or by negotiable warrant or check bearing even date with the payday.

(B) An employer may deposit all wages due to the employee's credit at a financial institution which is doing business in the State and is insured by an agency of the federal government. When an employee's wages are paid by deposit at a financial institution, he must be furnished a statement of earnings and withholdings. Any wage deposit plan adopted by an employer shall entitle each employee to at least one withdrawal for each deposit, free of any service charge.

(C) An employer shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.

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(D) Every employer in the State shall pay all wages due at the time and place designated as required by subsection (A) of Section 41-10-30.

SECTION 41-10-50. Payment of wages due discharged employees.

When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.

SECTION 41-10-60. Unconditional payment of wages conceded due.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount without condition within the time set by this chapter. Acceptance by the employee of the payment does not constitute a release as to the balance of his claim.

SECTION 41-10-70. Investigation of alleged violations; resolution of disputes.

Upon written complaint of any employee alleging a violation of this chapter, the Director of the Department of Labor, Licensing, and Regulation or his designee may institute an investigation of the alleged violation. If the Director of the Department of Labor, Licensing, and Regulation or his designee determines that a violation exists, he shall endeavor to resolve all issues by informal methods of mediation and conciliation.

SECTION 41-10-80. Violations and penalties; civil actions by employees; administrative review of civil penalties.

(A) Any employer who violates the provisions of Section 41-10-30 must be given a written warning by the Director of the Department of Labor, Licensing, and Regulation or his designee for the first offense and must be assessed a civil penalty of not more than one hundred dollars for each subsequent offense.

(B) Any employer who violates the provisions of Section 41-10-40 must be assessed a civil penalty of not more than one hundred dollars for each violation. Each failure to pay constitutes a separate offense.

(C) In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.

(D) The Director of the Department of Labor, Licensing, and Regulation or his designee shall promulgate regulations to establish a procedure for administrative review of any civil penalty assessed by the commissioner.

SECTION 41-10-90. Actions for collection of penalties; deposit of amounts collected.

In each case where a civil penalty assessed under subsection (A) or (B) of Section 41-10-80 is not paid within sixty days the Director of the Department of Labor, Licensing, and Regulation or his designee shall bring an action against the assessed employer for collection of the penalty. Any amounts collected must be turned over to the State Treasurer for deposit in the general fund of the State.

SECTION 41-10-100. Prohibition against private agreements which contravene chapter.

No provision of this chapter may be contravened or set aside by a private agreement.

SECTION 41-10-110. Right of Commissioner of Labor to enter and to conduct investigation.

The Director of the Department of Labor, Licensing, and Regulation or his designee, his inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question either publicly or privately any employer, owner, manager, or agent and the employees of the employer and inspect, investigate, reproduce, or photograph time records or payroll records for the purpose of determining that the provisions of this chapter are complied with.

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CHAPTER 13.

CHILD LABOR

SECTION 41-13-5. "Employer" defined.

As used in this article "employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this State, the State or any political subdivision thereof and any agent or officer of the above-mentioned classes employing any person in this State.

SECTION 41-13-20. Oppressive child labor practices prohibited; Director of the Department of Labor, Licensing, and Regulation or his designee to promulgate regulations.

No employer in this State shall engage in any oppressive child labor practices. The Director of the Department of Labor, Licensing, and Regulation or his designee shall promulgate regulations pursuant to Sections 1-23-10 et seq. which will prohibit and prevent such oppressive child labor practices provided that such regulations shall not be more restrictive or burdensome than applicable federal laws or regulations.

SECTION 41-13-25. Penalties for violating child labor regulations.

(A) As determined by the Director of the Department of Labor, Licensing and Regulation or the director's designee, an employer who violates a child labor regulation promulgated pursuant to this chapter must be given a written warning of the violation for a first offense or may be fined not more than one thousand dollars. For second or subsequent offenses, an employer may be fined not more than five thousand dollars for each offense. The director shall determine the amount of the penalty pursuant to procedures promulgated by the department in regulation for assessing penalties under this chapter. These regulations shall include the method for determining penalties based on the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations of the employer.

(B) The findings of the director, including the amount of the fine, are final unless within thirty days after receipt of their notice by certified mail the employer requests in writing to the director a review of the findings or the amount of the fine. If a request for review is made to the director, a final determination must be made after an opportunity for a hearing pursuant to the Administrative Procedures Act.

(C) The amount of the fine as finally determined may be recovered in a civil action brought in a court of competent jurisdiction and deposited in the state general fund.

SECTION 41-13-30. Misrepresentation of age of child.

Any parent, guardian or other person having under his control any child who consents, suffers or permits the employment of his child or ward under the ages above provided or who knowingly or wilfully misrepresents the age of such child or ward to any person in order to obtain employment for such child or ward contrary to the provisions of Section 41-13-10 shall be guilty of a misdemeanor and for every offense shall, upon conviction thereof, be fined not less than ten dollars nor more than fifty dollars or be imprisoned not longer than thirty days, in the discretion of the court.

SECTION 41-13-40. Repealed by 1998 Act No. 395, Section 2, eff June 9, 1998.

SECTION 41-13-50. Enforcement.

The Director of the Department of Labor, Licensing, and Regulation or his designee and the inspectors and agents of the Division of Labor shall enforce the provisions of this chapter, make complaints against persons violating its provisions and institute prosecutions for violation thereof.

SECTION 41-13-60. Inspection of factories and records for enforcement purposes.

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The Commissioner and the inspectors and agents of the Department may enter and inspect at any time any place or establishment where minors are employed and may have access to all such records as may aid in the enforcement of this chapter.

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CHAPTER 15.

OCCUPATIONAL HEALTH AND SAFETY

ARTICLE 1.

GENERAL PROVISIONS

SECTION 41-15-10. Locking of employees in buildings.

Any person employing persons and working them in buildings is forbidden to lock such employees in such buildings when by so doing they become endangered by fire. But the provisions of this section shall not apply to any building or room that may be locked so as to be opened from the inside by any employee of ordinary intelligence. The sheriff, constables and all other law enforcing officers shall see that the provisions hereof are observed and shall prosecute all violations thereof called to their attention or discovered by them. Any violation hereof shall be a misdemeanor and the violator shall be subject to a fine of not less than fifty dollars, nor more than one thousand dollars, or not exceeding six months in prison in the discretion of the court.

SECTION 41-15-50. Light at entrance to elevator shafts required when elevator is in operation.

It is unlawful for a person to operate an elevator without a proper light at the entrance of all elevator shafts while the elevator is in operation.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year.

SECTION 41-15-80. Employers shall furnish safe place; compliance of employers and employees to certain rules.

(1) Each employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and he shall comply with occupational safety and health rules and regulations promulgated under this chapter.

(2) Each employee shall comply with occupational safety and health rules, regulations and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

SECTION 41-15-90. Employers shall inform employees of protections and obligations; exceptions.

The Director of the Department of Labor, Licensing, and Regulation or his designee shall issue rules and regulations requiring that employers keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health regulations, through the posting of notices or other appropriate means. The provisions of Section 41-15-80 and this section shall not apply to employers subject to the provisions of the Federal Railway Safety Act of 1970.

SECTION 41-15-100. Exposure of employees to potentially harmful materials.

The Director of the Department of Labor, Licensing, and Regulation or his designee shall issue regulations requiring employers to monitor and measure an employee's exposure to potentially toxic materials or harmful physical agents and to maintain accurate records of such employee exposure. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic material or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under Sections 41-15-210 to 41-15-330, as amended, and shall inform any employee who is being thus exposed of the corrective action being taken.

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Where appropriate, such regulations shall also prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. The results of the medical examinations or other tests shall be made available to the employer, the Commissioner, and at the request of the employee, to his physician.

In the event such medical examinations or other tests are in the nature of research, such examinations may be furnished at the expense of the Division of Labor. The results of such examinations or tests shall be furnished only to the Director of the Department of Labor, Licensing, and Regulation or his designee and, at the request of the employee, to his physician.

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ARTICLE 3.

RULES AND REGULATIONS OF COMMISSIONER OF LABOR

SECTION 41-15-210. Commissioner may promulgate, modify or revoke rules and regulations.

The Director of the Department of Labor, Licensing, and Regulation or his designee may promulgate, modify or revoke rules and regulations which will have full force and effect of law upon being properly certified and filed for the purpose of attaining the highest degree of health and safety protection for any and all employees working within the State of South Carolina, whether employed in the public or private sector.

SECTION 41-15-220. Notice and hearing; occupational safety and health standards not subject to Administrative Procedure Act; rebuttable presumptions created by publication of notice.

(A) Before the promulgation, modification, or revocation of a regulation issued pursuant to this article, the commissioner shall conduct a public hearing at which all interested persons, including employer and employee representatives, must be provided an opportunity to appear and present their comments orally or written, or both. Notice of the hearing must be published in the State Register and in at least three newspapers, at least one of which has circulation in upper, lower, and middle South Carolina, once a week for three weeks. The notice must contain the date, time, and place of the hearing and a brief description of the proposed regulation.

(B) Occupational safety and health standards promulgated pursuant to this article are not subject to the Administrative Procedures Act. After promulgation the department shall file a notice in the Legislative Council to be published in the State Register. This notice must refer to the federal occupational safety and health administration standards which have been repromulgated under this section and give specific notice of differences between the state and federal standard. Filing and publication of notice in the State Register give notice of the contents of the standard to a person subject to or affected by it.

(C) Publication of the notice creates a rebuttable presumption that the:

(1) standard to which it refers was promulgated under this section;

(2) notice was filed and made available for public inspection at the day and hour stated in it;

(3) copy on file in the Legislative Council is a true copy of the original.

SECTION 41-15-230. Effective dates.

Any rule or regulation promulgated, modified or revoked under this article may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence, modification or revocation of the rule or regulation and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule or regulation.

SECTION 41-15-240. Temporary permits for variances.

Any affected employer may apply to the Director of the Department of Labor, Licensing, and Regulation or his designee for a temporary permit granting a variance from a rule or regulation or any provision thereof promulgated under this article. Affected employees shall be given notice by the employer of each such application and shall be furnished an opportunity to participate in any hearing which shall be directed at the request of the employer or by the Commissioner on his own motion. Such temporary permit shall be granted at the discretion of the Commissioner if sufficient evidence establishes that:

(a) He is unable to comply with a rule or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the rule or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date;

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(b) He is taking all available steps to safeguard his employees against the hazard covered by the rule or regulation;

(c) He has an effective program for coming into compliance with the rule or regulation as quickly as practicable. Any temporary permit issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the permit is in effect and state in detail his program for coming into compliance with the rule or regulation.

No temporary permit may be in effect for longer than the period needed by the employer to achieve compliance with the rule or regulation or for one year, whichever is shorter, except that such an order may be renewed not more than twice (1) so long as the requirements of this paragraph are met and (2) if an application for a renewal is filed at least ninety days prior to the expiration date of the order. The form of the application itself for a temporary permit shall be as prescribed by the Commissioner.

SECTION 41-15-250. Permits for permanent variances.

Any affected employer may apply to the Commissioner for a permit for a permanent variance from a rule or regulation promulgated under this article. Affected employees and their bargaining representative, if any, shall be given notice by the employer of each such application and shall be furnished an opportunity to participate in a hearing. The Commissioner shall issue such permit if he determines on the record, after opportunity for an inspection where applicable and a hearing, that the proponent of a variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the rule and regulation. The permit so issued shall prescribe the conditions the employer must maintain and the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the rule or regulation in question. Such a permit may be revoked or modified upon application by an employer, employee or by the Commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

SECTION 41-15-260. Interrogation; inspection; warrant for inspection; issuance; return; records of warrants issued.

(A) The Commissioner, his inspectors, compliance officers, agents or designees, upon proper presentation of credentials to the owner, manager or agent of the employer, shall enter at reasonable times and have the right to question either publicly or privately any such employer, owner, manager, agent or the employees of the employer and inspect, investigate, reproduce, photograph and sample all pertinent places, sites, areas, work injury records and such other records during regular working hours and at other reasonable times, and within reasonable limits, and in a reasonable manner when such comes under the jurisdiction of the Commissioner to enforce the occupational safety and health provisions of this title.

(B) If an inspector is denied admission for purposes of inspection, the Commissioner may seek a warrant as follows:

(1) Any circuit judge having jurisdiction where the inspection and investigation is to be conducted is empowered to issue administrative warrants upon proper showing of the need for such entry. Such inspection and investigation may include interviewing of employees, photographing, reproducing, sampling, and such other tests and acts as are necessary to carry out the purposes of the inspection and investigation.

(2) A warrant shall be issued only upon an affidavit of an officer or employee of the Division of Labor duly designated and having knowledge of the facts alleged, sworn to before the circuit judge establishing the grounds for issuing the warrant and certifying that request for permission to conduct the inspection has been made to the employer concerned and was refused and that the Director of the Department of Labor, Licensing, and Regulation or his designee has authorized the application for issuance of the warrant. If the circuit judge is satisfied that grounds for the application exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected. The warrant shall be directed to a person authorized by the Director of the Department of Labor, Licensing, and Regulation or his designee to execute it. The warrant shall state the grounds for issuance with the supporting affidavit being made a part thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified. The warrant shall direct that it be served at a reasonable time. It shall designate the circuit judge to whom it shall be returned.

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(3) A warrant issued pursuant to this section shall be served within ten days and returned within thirty days of its date of issue. The circuit judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall cause them to be filed with the court which issued such warrant.

(4) Any circuit judge authorized to issue warrants pursuant to this section shall keep a record along with a copy of the return warrant and supporting affidavit and documents for a period of three years from date of issuance of each warrant. The record shall be on a form prescribed by the Director of the Department of Labor, Licensing, and Regulation or his designee and reflect as to each warrant:

(a) Date and exact time of issue;

(b) Name of person to whom warrant issued;

(c) Name of person whose establishment or site is to be inspected;

(d) Reason for issuance of warrant;

(e) Date and time of return.

SECTION 41-15-270. Subpoenas, taking of testimony and the like.

The Director of the Department of Labor, Licensing, and Regulation or his designee may subpoena witnesses, documents, take and preserve testimony, examine witnesses, administer oaths and, upon proper presentation of credentials to the owner, manager or agent of the employer, enter any place, site or area where employment comes under the jurisdiction of the Commissioner and interrogate any person employed therein or connected therewith or the proper officers of a corporation or employer, or he may file a written or printed list of interrogatories and require full and complete answers to them to be returned under oath within fifteen days of the receipt of such list.

SECTION 41-15-280. Citation for violation; notice in lieu of citation.

If, upon inspection or investigation, the Commissioner or his authorized representative ascertains that an employer has violated a requirement of any rule or regulation promulgated pursuant to this article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to any statute or rule or regulation alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation. The Commissioner may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health. Such notice shall have the effect of a recommendation to the employer; compliance will not be required.

Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Commissioner, at or near each place a violation referred to in the citation occurred.

No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

SECTION 41-15-290. Correction of dangerous conditions or practices; injunctions; mandamus.

(a) The court of common pleas of the county where the place of employment is located shall have jurisdiction, upon petition of the Director of the Department of Labor, Licensing, and Regulation or his designee, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures provided by law. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

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(b) Upon the filing of any such petition the court of common pleas shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to the law.

(c) Whenever and as soon as a safety specialist concludes that conditions or practices described in item (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought.

(d) If the Director of the Department of Labor, Licensing, and Regulation or his designee, or his authorized representative, arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured or aggrieved by reason of such failure, or the representative of such employees, may bring an action against the Commissioner in the court of common pleas for the district in which the imminent danger is alleged to exist, or the employer has its principal office, or an affected employee resides, for a writ of mandamus to compel the Commissioner to seek such an order and for such further relief as may be appropriate.

SECTION 41-15-300. Notice of penalties.

If, after an inspection or investigation, the Commissioner issues a citation, he shall within a reasonable time after the termination of such inspection or investigation notify the employer by certified mail of the penalty, if any, assessed under Section 41-15-320.

SECTION 41-15-310. Review by Commissioner and courts.

The Director of the Department of Labor, Licensing, and Regulation or his designee shall promulgate regulations as may be necessary to establish a procedure for administrative review before the Commissioner or his authorized representative or representatives for any employer or employee or employee's representative affected or aggrieved by (1) any act of the Commissioner, (2) any citation issued by the Commissioner, (3) any penalty assessed by the Commissioner, or (4) any period of abatement set by the Commissioner.

Any employer, employee or their representatives has the right to appear as a party in any review proceedings before the Commissioner or his authorized representative or representatives by giving written notice to the Director of the Department of Labor, Licensing, and Regulation or his designee within twenty days of the act or receipt of citation, or notice of the penalty or period of abatement.

Within a reasonable time, the Commissioner shall make and serve in writing, upon each party, his decision, which becomes final upon the thirtieth day after service thereof.

Any employer or employee or their representative or representatives aggrieved by any order or findings of the Commissioner may obtain a review of the order or findings by petitioning the court of common pleas in the county where the employer maintains his principal place of business or where the violation is alleged to have occurred for a review of the order or findings by proper service upon the Director of the Department of Labor, Licensing, and Regulation or his designee within thirty days after service upon the party of the decision of the Commissioner. The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the order of the Commissioner. No objection that has not been urged before the Commissioner shall be considered by the court.

Notwithstanding the above provisions of this section, on October 1, 1983, or such later time as the South Carolina Occupational Health and Safety Review Board is duly constituted, the Director of the Department of Labor, Licensing, and Regulation or his designee shall cease to provide administrative review pursuant to this section. All matters pending before the Director of the Department of Labor, Licensing, and Regulation or his designee pursuant to this section and the regulations hereunder shall be transferred to the South Carolina Occupational Safety and Health Review Board on October 1, 1983, or such later time as it is duly constituted.

SECTION 41-15-320. Penalties.

(a) Any employer who wilfully or repeatedly violates any occupational safety or health rule or regulation promulgated pursuant to this article may be assessed a civil penalty of not more than seventy thousand dollars for each violation.

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(b) Any employer who has received a citation for a serious violation of an occupational safety or health rule or regulation promulgated pursuant to this article may be assessed a civil penalty of up to seven thousand dollars for each such violation.

(c) Any employer who has received a citation for a violation of an occupational safety or health rule or regulation or order promulgated pursuant to this article, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under Section 41-15-280 within the period permitted for its correction (which period shall not begin to run until the date of the final order of the commissioner in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(e) Any employer who willfully violates any occupational safety or health rule or regulation promulgated pursuant to this article and that violation causes death to any employee shall be deemed guilty of a misdemeanor and, upon conviction, be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than twenty thousand dollars or by imprisonment for not more than one year, or by both.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of this article, may be assessed a civil penalty of up to seven thousand dollars for each violation.

(g) Any person who gives advance notice of any inspection to be conducted under this article, without authority from the Director of the Department of Labor, Licensing, and Regulation or his designee, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both.

(h) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or both.

(i) For the purposes of this section, an occupational safety or health rule or regulation shall be deemed to be a rule or regulation promulgated by the Director of the Department of Labor, Licensing, and Regulation or his designee pursuant to Section 41-15-210 which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, necessary or appropriate to provide safe or healthful employment and places of employment.

(j) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(k) Except for items (e), (g) and (h) which establishes a misdemeanor over which the courts of general sessions have jurisdiction, all penalty assessments shall be made by the Commissioner.

(l) Any amounts collected under this section shall be turned over to the State Treasurer for deposit in the General Fund of the State.

SECTION 41-15-330. Action when penalty is not paid within thirty days.

In each case where the penalty is not paid within thirty days, the Attorney General shall bring an action against the assessed employer. Any amounts collected shall be turned over to the State Treasurer for deposit in the General Fund of the State.

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ARTICLE 5.

RIGHTS AND REMEDIES OF AGGRIEVED EMPLOYEES

SECTION 41-15-510. Employees shall not be discriminated against for filing complaints, instituting proceedings or the like.

No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted, or caused to be instituted, any proceeding under or relating to statutes, rules or regulations regarding occupational safety and health, or testified, or is about to testify, in any such proceedings or because of the exercise by such employee on behalf of himself or others of any right afforded by such statutes, rules or regulations.

SECTION 41-15-520. Remedy of employee charging discrimination.

Any employee believing that he has been discharged or otherwise discriminated against by any person in violation of Section 41-15-510 may, within thirty days after such violation occurs, file a complaint with the Commission of Labor alleging such discrimination. Upon receipt of such complaint, the Commissioner shall cause investigation to be made as he deems appropriate. If upon such investigation the Commissioner determines that the provisions of Section 41-15-510 have been violated, he shall institute an action in the appropriate court of common pleas against such person. In any such action the court of common pleas shall have jurisdiction for cause shown to restrain violations of Section 41-15-510 and order all appropriate relief including rehiring or reinstatement of employee to his former position with back pay.

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ARTICLE 6.

SOUTH CAROLINA OCCUPATIONAL HEALTH AND SAFETY REVIEW BOARD

SECTION 41-15-600. Occupational Health and Safety Review Board created; appointment, terms and compensation of members; chairman; duties generally.

(a) There is created the South Carolina Occupational Health and Safety Review Board which shall consist of six members. Members of the board shall be selected from among those persons who by reason of training, education, experience, or knowledge of the law are qualified to carry out the functions of the board under this chapter. One member shall be elected from each congressional district of this State by the resident members of the General Assembly from that district. The senior senator from each congressional district within sixty days after the effective date of this article, within sixty days prior to the expiration of the term of the member from that district, and within sixty days after any vacancy has occurred in that district shall call a meeting of the resident members of the General Assembly from the district to elect a member of the board from the district.

(b) The terms of the members of the board are four years and until their successors are elected and qualify, except that the member first elected from the first congressional district shall serve for an initial term of one year, the members first elected from the second and third congressional districts shall serve for initial terms of two years each, the member first elected from the fourth congressional district shall serve for an initial term of three years, and the members first elected from the fifth and sixth congressional districts shall serve for initial terms of four years each. Vacancies shall be filled for the remainder of the unexpired term by election in the same manner of the original election.

(c) The members of the board shall annually elect a chairman and such other officers as they deem necessary. No officer shall serve for more than two consecutive years in that capacity.

(d) The board shall hear and determine all contested cases and shall approve all settlements of such cases which arise as a result of any citation issued by the Division of Labor pursuant to the authority in this chapter, any penalty assessed thereunder, and any date set for the abatement of any violations.

(e) The chairman is responsible on behalf of the board for the administrative operations of the board.

(f) Compensation for members of the board, to the extent funds are appropriated therefor by the General Assembly, shall be set by regulation of the South Carolina Division of Labor. Service on the board shall not be creditable service for purposes of the South Carolina Retirement System.

SECTION 41-15-610. Hearings on citations, abatements and penalties; procedure; judicial review.

(a) The board shall promulgate regulations as may be necessary to establish a procedure for administrative review of

(1) any citation issued by the Division of Labor pursuant to the authority found in this chapter,

(2) any penalty assessed thereunder, or

(3) any period for abatement set by the Division of Labor.

(b) Any employer, employee, or employee representative has the right to appear as a party in any review proceeding before any member of the board by giving written notice of protest to the board and to the Division of Labor within twenty days of the receipt of any citation, notice of penalty, or notice of period of abatement issued by the Division of Labor and affecting the employer, employee, or employee representative. The Division of Labor must be a party to any proceeding brought pursuant to this article.

(c) Hearings may be conducted by any member of the board and must follow the rules of evidence as applied in civil cases in the court of common pleas.

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(d) Any party aggrieved by any decision, order, or findings of any member of the board may petition the entire board for review within thirty days of the service of the decision, order, or findings. Review may be granted by concurrence of three members of the board not including the hearing member. Full board reviews shall be conducted by five members only with the original hearing member not sitting. Where all members are not available due to incapacity or a vacancy, decisions of the hearing member shall not be reversed except upon the vote of at least three other board members. The review must be upon the record made before the hearing members and no objection that has not been urged before the hearing member may be considered by the board.

(e) Any party aggrieved by any decision, order, or findings of the board may petition the court of common pleas in the county where the employer maintains his principal place of business or where the violation is alleged to have occurred for a review of the decision, order, or findings. The proceeding shall be instituted by proper service upon all other parties of the petition for review within thirty days after service of the decision, order, or findings of the board. The commencement of proceedings under this section shall not, unless ordered by the court of common pleas, operate as a stay of the order of the board. This review is subject to all provisions of the State Administrative Procedures Act.

(f) Any decision, order, or findings of the board or any member thereof becomes a final order of the board upon the thirtieth day after service thereof, except where petition for review has been properly made.

(g) The board shall promulgate regulations as may be necessary to provide for the preparation and reasonable preservation of a record of the hearings and other proceedings.

SECTION 41-15-615. Individuals, partnerships, corporations, or other business entities authorized to appear pro se.

An individual, partnership, corporation, or other business entity is not required to be represented by an attorney when appearing in a proceeding before the board, but may appear pro se.

SECTION 41-15-620. Personnel and facilities.

(a) The South Carolina Division of Labor shall provide, to the extent of funds appropriated by the General Assembly, adequate support personnel, including court reporters and clerks, to fulfill the duties of the board.

(b) The South Carolina Division of Labor shall provide adequate facilities to maintain the records of the board.

SECTION 41-15-630. Witnesses; discovery.

(a) The board or any member thereof may for the purposes of this article subpoena witnesses, administer or cause to be administered oaths, and examine or cause to be examined the books and records of the parties to proceedings before it as relate to questions in dispute.

(b) Any party desiring discovery by deposition, interrogatory, or entry upon designated land or other property in the possession or control of another party shall apply to the hearing member of the board for an order directing such discovery. In the event that the hearing member grants an application for the conduct of the discovery proceedings, the order must set forth appropriate time limits and such other limits as required by law.

SECTION 41-15-640. Enforcement of witness attendance.

The court of common pleas shall, upon application by the board or any member thereof, or by any party to a proceeding before it, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records and may punish as for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers, and records as may have been required in any subpoena issued by the board or any member thereof. The board or any member thereof may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who has ignored or failed to comply with any subpoena issued by the board which has been duly served upon the witness. The warrant shall authorize the sheriff to arrest and produce at the hearing the witness and it is his duty to do so. The failure of a witness to appear in response to a subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

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CHAPTER 17.

CONCILIATION OF INDUSTRIAL DISPUTES

SECTION 41-17-10. Commissioner's duties as to investigation of industrial disputes and conciliation thereof.

The Director of the Department of Labor, Licensing, and Regulation or his designee or his agents shall (a) investigate industrial disputes or strikes or lockouts arising between employer and employees or capital and labor, (b) ascertain, as near as may be, the cause or causes of such industrial disputes or strikes or lockouts, (c) make a finding of fact in respect thereto, (d) endeavor, as far as possible, to remove misunderstandings or differences and to induce both sides to such an industrial dispute or strike or lockout to arrive at an agreement, (e) nominate, appoint or act as arbitrators when so requested by both sides to such a controversy and (f) in general, remove as far as possible the causes for industrial disputes or strikes or lockouts and induce an amicable settlement of them. Unless the Commissioner or his agents find it inadvisable so to do the finding of fact of the Commissioner or his agents as to all such disputes shall be reported to the Governor as soon as practicable in each case and annually to the General Assembly.

SECTION 41-17-20. Conciliation committees.

When the Commissioner or his agents shall fail to induce both sides of such an industrial dispute or strike or lockout to arrive at an agreement, the Commissioner may appoint a committee of three as follows: One from capital, one from labor and one at large. The Commissioner shall be ex officio chairman of such committee. The duties of the committee shall be the same as those prescribed for the Commissioner in Section 41-17-10.

SECTION 41-17-30. Chapter not applicable to railroad and express companies.

The provisions of this chapter shall not apply to any railroad corporation or express company doing business by rail or the receivers or trustees of any railroad corporation or express company doing business by rail or to any employee of any thereof.

SECTION 41-17-40. Summoning and examining witnesses.

The Director of the Department of Labor, Licensing, and Regulation or his designee or his agents may summon and examine in public or in executive session any person concerned in any such strike or lockout or industrial dispute or any other person within the State and may compel them to testify.

SECTION 41-17-50. Other powers of Commissioner in regard to investigations.

The Director of the Department of Labor, Licensing, and Regulation or his designee or his agents may compel the production of books or documents relating to questions in dispute; inspect property with respect to which there is a dispute with relation to an industrial dispute or strikes or lockout; examine into working conditions and sanitary conditions; and at all times have access to any property or premises necessary to any such inspection.

SECTION 41-17-60. Powers of Governor.

The Director of the Department of Labor, Licensing, and Regulation or his designee or his agents can be called into session and into the performance of their duties and functions under this chapter by the Governor.

SECTION 41-17-70. Hindering Commissioner in performance of duties.

Any person that hinders or obstructs the Director of the Department of Labor, Licensing, and Regulation or his designee or his agents in the full and free performance of their duties under this chapter shall be guilty of a misdemeanor for each and every such offense and upon conviction in a court of competent jurisdiction shall be fined not less than twenty-five dollars, nor more than one hundred dollars or sentenced to serve not more than thirty days upon the county chain gang.

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Sources of Additional Information

Additional information or assistance regarding S.C. labor laws, their application and enforcement, may be obtained by contacting the appropriate office listed below:

Director's Office	803-896-4390
Labor Management Mediation	803-896-5156
Wages and Child Labor	803-896-7756
OSHA Voluntary Programs	803-896-7744
Occupational Safety & Health	803-896-7686

This booklet is available at www.llr.state.sc.us

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