

South Carolina General Assembly
124th Session, 2021-2022

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R237, S533

STATUS INFORMATION

Joint Resolution

Sponsors: Senators Shealy, Gambrell, Allen, Williams, Jackson, Gustafson, Stephens, Malloy and McElveen

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Introduced in the Senate on February 9, 2021

Introduced in the House on April 13, 2021

Last Amended on May 11, 2022

Passed by the General Assembly on May 12, 2022

Summary: Minimum wage

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/9/2021	Senate	Introduced and read first time (Senate Journal-page 5)
2/9/2021	Senate	Referred to Committee on Labor, Commerce and Industry (Senate Journal-page 5)
4/6/2021	Senate	Committee report: Favorable with amendment Labor, Commerce and Industry (Senate Journal-page 12)
4/7/2021	Senate	Committee Amendment Adopted (Senate Journal-page 66)
4/7/2021	Senate	Amended (Senate Journal-page 66)
4/7/2021	Senate	Read second time (Senate Journal-page 66)
4/8/2021		Scrivener's error corrected
4/8/2021	Senate	Amended (Senate Journal-page 52)
4/8/2021	Senate	Read third time and sent to House (Senate Journal-page 52)
4/8/2021	Senate	Roll call Ayes-43 Nays-0 (Senate Journal-page 52)
4/13/2021	House	Introduced and read first time (House Journal-page 9)
4/13/2021	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 9)
4/28/2022	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 6)
5/2/2022		Scrivener's error corrected
5/4/2022	House	Amended (House Journal-page 69)
5/4/2022	House	Read second time (House Journal-page 69)
5/4/2022	House	Roll call Yeas-104 Nays-4 (House Journal-page 75)
5/5/2022	House	Read third time and returned to Senate with amendments (House Journal-page 9)
5/5/2022		Scrivener's error corrected
5/11/2022	Senate	House amendment amended (Senate Journal-page 88)
5/11/2022	Senate	Roll call Ayes-39 Nays-0 (Senate Journal-page 88)
5/11/2022	Senate	Returned to House with amendments (Senate Journal-page 88)
5/12/2022	House	Concurred in Senate amendment and enrolled (House Journal-page 89)
5/12/2022	House	Roll call Yeas-101 Nays-2 (House Journal-page 90)
5/18/2022		Ratified R 237

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VERSIONS OF THIS BILL

[2/9/2021](#)

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NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R237, S533)

A JOINT RESOLUTION TO PROHIBIT THE USE OF SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT OF 1938 TO PAY SUBMINIMUM WAGES TO INDIVIDUALS WITH DISABILITIES; TO PROVIDE DEFINITIONS; AND TO ENACT THE "EMPLOYMENT FIRST INITIATIVE ACT", SO AS TO DEFINE TERMS, ENCOURAGE STATE AGENCIES AND POLITICAL SUBDIVISIONS TO ENCOURAGE COMPETITIVE EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES, TO CREATE THE SOUTH CAROLINA EMPLOYMENT FIRST OVERSIGHT COMMISSION, AND TO OUTLINE ITS DUTIES AND OBLIGATIONS.

Whereas, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes employers, after receiving a certificate from the United States Department of Labor's Wage and Hour Division, to pay special minimum wages that are less than the federal minimum wage to workers who have disabilities, for the work being performed; and

Whereas, Section 14(c)(1) defines a "worker with a disability" as an individual whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury; and

Whereas, in 2020, more than two thousand nine hundred South Carolinians with disabilities were employed in settings in which they could be paid a subminimum wage; and

Whereas, South Carolina continues to have one of the highest unemployment rates for persons with disabilities in the country. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Employers, community rehabilitation programs, and hospital patient care workers at regional centers

SECTION 1. Employers, community rehabilitation programs, and hospital patient care workers at regional centers shall not use Section 14(c) of the Fair Labor Standards Act of 1938 to pay disabled employees a subminimum wage. No individual with a disability may be paid less than the federal minimum wage.

Department of Disabilities and Special Needs

SECTION 2. Beginning on January 1, 2023, and annually thereafter, the Department of Disabilities and Special Needs shall submit a report to the General Assembly concerning the payment of a subminimum wage in

South Carolina. The report shall:

- (1) identify all providers in this State that maintain a Section 14(c) certificate;
- (2) identify which of those providers pay a subminimum wage;
- (3) identify which of those providers used to pay a subminimum wage but have stopped that practice;
- (4) identify which of those providers that stopped paying a subminimum wage did so due to an increase in the federal minimum wage; and
- (5) provide data regarding the success in obtaining minimum wage employment of individuals with severe intellectual disabilities as compared to individuals with mild or moderate intellectual disabilities.

Definitions

SECTION 3. (A) For the purposes of this SECTION:

- (1) "Competitive employment" means employment in a competitive labor market that is performed on a full- or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for comparable work performed by an individual without a disability.
- (2) "Disability" means a physical or mental impairment that substantially limits one or more of an individual's major life activities, or a record of a physical or mental impairment, of being regarded as impaired, or of any condition that would be considered a disability under the Americans with Disabilities Act.
- (3) "Integrated setting" means an employment setting in which individuals with disabilities interact with individuals without disabilities, with the exception of those who are providing services to employees with disabilities, to the same extent that individuals without disabilities in comparable positions interact with other persons.
- (4) "Task force" means the South Carolina Task Force on Eliminating the Subminimum Wage.

(B) The South Carolina Task Force on Eliminating the Subminimum Wage shall be comprised of the following:

- (1) one member from Disability Rights South Carolina;
- (2) one member from the South Carolina Developmental Disabilities Council;
- (3) one member from Able SC;
- (4) one member from the South Carolina University Center for Excellence in Developmental Disabilities;
- (5) two members who are currently authorized to pay a subminimum wage appointed by the Director of the South Carolina Department of Disabilities and Special Needs;
- (6) two members who are current or former employees with a disability who are or were paid a subminimum wage appointed by the Director of the South Carolina Department of Disabilities and Special Needs;
- (7) the Director of the South Carolina Department of Employment and Workforce, or his designee;
- (8) the Director of the South Carolina Department of Health and Human Services, or his designee;
- (9) the Director of the South Carolina Department of Disabilities and Special Needs, or his designee;

- (10) the Director of the South Carolina Vocational Rehabilitation Department, or his designee; and
 - (11) the Director of the South Carolina Commission for the Blind, or his designee.
- (C) The task force shall be responsible for the following duties:
- (1) developing a plan to phase out the use of the subminimum wage by August 1, 2024;
 - (2) identifying and developing protections for disabled subminimum wage employees to maintain competitive employment while phasing out the use of the subminimum wage;
 - (3) identifying and collaborating with employees, employers, organizations, agencies, and stakeholders impacted by the phase out of the subminimum wage on how to implement the plan and create sustainable, competitive work opportunities for employees with disabilities;
 - (4) proposing a plan to establish and evaluate benchmarks for measuring progress for each year of the phase out;
 - (5) proposing a plan to monitor and track the outcomes of employees with disabilities;
 - (6) identifying initiatives, investment, training, and services designed to improve wages, reduce unemployment rates, and provide support and sustainable work opportunities for persons with disabilities;
 - (7) identifying and making recommendations for sustainable support, funding, and resources for eliminating the subminimum wage, including the cost of implementing and providing ongoing employment services, training, and support for employees with disabilities and the cost of paying a minimum wage or more to employees with disabilities in integrated settings;
 - (8) ensuring that the plan protects the rights of persons with disabilities and follows Americans with Disabilities Act protections for employees and prospective employees with disabilities; and
 - (9) reporting on or before August first of each year to the Governor and the General Assembly on the benchmarks and results of the outcomes described in the above duties until the subminimum wage has been phased out, at which time the task force is dissolved.
- (D) The task force may utilize the staff of the South Carolina Senate and House of Representatives for clerical or related assistance, as approved and designated by the President of the Senate and the Speaker of the House of Representatives, as appropriate. The task force members may not receive compensation and are not entitled to receive mileage, subsistence, or per diem as provided by law for members of boards and commissions.

Employment First Initiative Act

SECTION 4.A. Title 41 of the 1976 Code is amended by adding:

"CHAPTER 5

Employment First Initiative Act

Section [41-5-110](#). This chapter must be known and may be cited as the 'Employment First Initiative Act'.

Section [41-5-120](#). As used in this chapter:

- (1) 'Competitive integrated employment' means work in the competitive labor market that is:
 - (a) performed on a full-time or part-time basis in an integrated setting; and

(b) for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(2) 'Integrated setting' means, with respect to an employment outcome, a setting typically found in the community in which employed individuals with disabilities interact with individuals without disabilities, other than individuals who are providing services to employees with disabilities, to the same extent that individuals without disabilities in comparable positions interact with other people.

Section [41-5-130](#). All state agencies and political subdivisions of this State are encouraged to consider adopting a policy that encourages competitive integrated employment for individuals with disabilities.

Section [41-5-140](#). All state agencies are encouraged to:

- (1) coordinate efforts and collaborate within and among themselves to ensure that state programs, policies, procedures, and funding support the competitive and integrated employment of individuals with disabilities;
- (2) share data and information across systems in order to track progress toward full implementation of this chapter, whenever feasible, and in accordance with all applicable state and federal confidentiality laws; and
- (3) adopt rules and promulgate regulations to implement the provisions of this chapter.

Section [41-5-150](#). (A) There is hereby established the 'South Carolina Employment First Oversight Commission' consisting of nine members appointed by the Governor, five of whom must have a disability or have substantial knowledge of disability issues, and four of whom must be from the business community.

(B) The Governor shall designate one member to convene and organize the first meeting of the commission. During this meeting, the commission shall elect a chairperson and a vice chairperson from among its members.

(C) All actions of the commission must be taken by a majority of the members of the commission present and voting.

(D) Members of the commission may not receive compensation, mileage, subsistence, or per diem for their service to the commission.

Section [41-5-160](#). Within six months after the first meeting required in Section [41-5-150](#)(B), the commission shall establish evidence-based measurable goals and objectives to encourage implementation of this chapter. The commission shall track the measurable progress of state agencies in implementing this chapter. All state agencies are encouraged to assist the commission in carrying out its duties by fully cooperating with each other and the commission, and by providing data and information in accordance with all applicable state and federal confidentiality laws.

Section [41-5-170](#). The commission annually shall, before January first, issue a report to the Governor and members of the General Assembly which details progress toward the goals and objectives of the commission and progress toward the full implementation of this chapter. The report also shall identify barriers to achieving the outcomes and effective strategies and policies that can help realize the employment first initiative. All state agencies are encouraged to cooperate with the commission on the creation and dissemination of the annual report.

Section [41-5-180](#). The commission may seek the guidance and expertise of all stakeholders, including individuals with disabilities, organizations that advocate on behalf of individuals with disabilities, providers of services to individuals with disabilities, local government, and business associations."

B. This SECTION takes effect upon approval by the Governor.

Time effective

SECTION 5. This joint resolution takes effect upon approval by the Governor.

Ratified the 18th day of May, 2022.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2022.

Governor

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