

## Session 110 - (1993-1994)

### **H 3709 General Bill, By J.J. Bailey, R.S. Corning, J.T. McElveen, Quinn and Scott**

#### ***Similar (S 0540)***

A Bill to amend Section 42-1-40, Code of Laws of South Carolina, 1976, relating to the definition of "average weekly wages" under the Workers' Compensation Law, so as to delete certain language and provisions and provide that average weekly wage is calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less; to amend Section 42-1-160, relating to the definitions of "injury" and "personal injury" for purposes of the Workers' Compensation Law, so as to add provisions relating to work-related stress; to amend Section 42-1-310, relating to the presumption of acceptance of the provisions of Title 42 (Workers' Compensation), so as to delete certain language and to define "employment" and "improvement or modification of real property"; to amend the 1976 Code by adding Section 42-1-315 so as to provide that officers of a corporation are employees under Title 42 and may reject coverage by giving certain notice; to amend Section 42-1-320, relating to the provision that public entities and their employees cannot exempt themselves from Title 42 (Workers' Compensation), so as to delete provisions and provide that the State, its municipal corporations and political subdivisions thereof, and such employees, are subject to Title 42; to amend Section 42-1-330, relating to waiver of exemption under the Workers' Compensation Law, so as to, among other things, include officer of a corporation under the provisions of this Section; to amend the 1976 Code by adding Section 42-1-335 so as to provide, among other things, that an employer who is exempt from Title 42 elects to adopt the Title by obtaining Workers' Compensation insurance or by operating under an approved self-insurance program; to amend Section 42-1-340, relating to the effective date of and the manner of giving notice of nonacceptance or waiver with respect to Title 42 (Workers' Compensation), so as to delete certain language and to reference Section 42-1-315; to amend Section 42-1-510, relating to defenses which are not available to an employer who is not under Title 42 (Workers' Compensation), so as to provide that comparative negligence does not apply, and further define "employer" for purposes of defending an action at law; to amend Section 42-1-520, relating to defenses which are available to an employer operating under Title 42 (Workers' Compensation) when the employee is not so operating, so as to delete references to "employee" and substitute therefor "officer of a corporation"; to amend the 1976 Code by adding Section 42-3-195 so as to provide, among other things, that the Workers' Compensation Commission shall cooperate with and provide information and statistics to any agency of the State or of the United States charged with the duty of enforcing any law securing safety against injury in any employment covered by Title 42 or with any state or federal agency engaged in enforcing any laws to assure safety for employees; to amend Section 42-5-40, relating to the penalty for failure to secure payment of Workers' Compensation, so as to delete certain language and provide a separate penalty for wilful or repeated violations; to amend Section 42-7-200, as amended, relating to the Workers' Compensation Uninsured Employers' Fund, so as to provide that the remedy provided in this Section shall not apply until all available administrative remedies under Title 42 against any insured statutory employer have been exhausted; to amend Section 42-9-220, relating to the manner in which Workers' Compensation shall be paid, so as to provide that compensation must be paid by check and not a draft; to amend Section 42-9-360, relating to assignments of Workers' Compensation and exemptions from claims of creditors and taxes, so as to add certain provisions, including a provision that it shall be unlawful for an authorized health care provider to demand of or cause a demand to be made on a Workers' Compensation claimant prior to the final adjudication of his claim, and provide for certain monetary penalties to be paid to the Workers' Compensation claimant; to amend the 1976 Code by adding Section 42-9-395 so as to add provisions relating to settlement agreements providing for structured settlements in Workers' Compensation cases; to amend Section 42-17-90, relating to review of a Workers' Compensation award on a change of condition, so as to provide for the entering of an order rather than the making of an award, and add certain provisions, including a provision that the Workers' Compensation Commission shall provide by regulation the method and procedure by which an award or order commencing temporary compensation and entered without an evidentiary hearing may be set aside for fraud; to amend Section 42-19-10, as amended, relating to employers' records and reports of injuries under the Workers' Compensation Law, so as to delete the provisions of the Section and add provisions, including a provision detailing the circumstances under which an employer is not required to make a written report; to amend Chapter 55 of Title 38, relating to conduct of insurance business, by adding Article 5 so as to enact the "Omnibus Insurance Fraud and Reporting Immunity Act", including provisions for, among other things, the establishment in the Office of the Attorney General of an Insurance Fraud Division and the creation of a felony offense and the provision of penalties therefor; to amend the 1976 Code by adding Section 42-9-440 so as to provide that the Workers' Compensation Commission may refer all cases of suspected fraud to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act; to amend Section 16-1-10, as amended, relating to crimes classified as felonies, so as to include the offense in Section 38-55-540; and to repeal Section 42-1-380, relating to the waiver of exemption by employer with respect to the mandatory

provisions of Title 42 (Workers' Compensation) and Section 42-1-530, relating to defenses which are not available to an employer when neither he nor the employee is under Title 42.

**03/15/93 House Introduced and read first time HJ-6**

**03/15/93 House Referred to Committee on Labor, Commerce and Industry HJ-10**