**A** **BILL**

TO AMEND SECTION 42‑1‑130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF EMPLOYEE, SO AS TO INCLUDE LEGAL IMMIGRANTS AND ILLEGAL IMMIGRANTS, PROVIDED THE EMPLOYER WAS NOT AWARE OF THE IMMIGRANT’S ILLEGAL STATUS PRIOR TO THE EMPLOYEE’S INJURY; TO AMEND SECTION 42‑1‑360, AS AMENDED, RELATING TO PERSONS NOT COVERED UNDER THE WORKERS’ COMPENSATION LAW, SO AS TO EXCLUDE FROM WORKERS’ COMPENSATION ILLEGAL IMMIGRANTS WHOSE ILLEGAL STATUS WAS KNOWN TO THE EMPLOYER AT THE TIME OF THE IMMIGRANTS’ HIRE AND ILLEGAL IMMIGRANTS WHOM THE EMPLOYER DISCOVERS THE ILLEGAL STATUS DURING EMPLOYMENT BUT BEFORE INJURY AND TO RESTRICT RECOVERY IN THESE CIRCUMSTANCES TO THE PROVISIONS OF CHAPTER 10, TITLE 41; AND TO AMEND SECTION 41‑10‑10, AS AMENDED, RELATING TO DEFINITIONS REGARDING PAYMENT OF WAGES, SO AS TO INCLUDE IN “WAGES” MEDICAL PAYMENTS PROVIDED TO ILLEGAL IMMIGRANTS EXCLUDED FROM WORKERS’ COMPENSATION.

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

SECTION 1. Section 42‑1‑130 of the 1976 Code, as last amended by Act 339 of 2002, is further amended to read:

“Section 42‑1‑130. The term ‘employee’ means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including: ~~aliens employed and also including~~

(1) legal immigrants;

(2) illegal immigrants, so long as the employer was not aware of the immigrant’s illegal status prior to the employee’s injury; and (3) minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer; and as relating to those employed by the State, the term ‘employee’ includes all members of the South Carolina State and National Guard while performing duties in connection with the membership except duty performed pursuant to Title 10 and Title 32 of the United States Code; all volunteer state constables appointed pursuant to Section 23‑1‑60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division; and all officers and employees of the State, except those elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; and as relating to municipal corporations and political subdivisions of the State, the term ‘employee’ includes all officers and employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers’ compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.”

SECTION 2. Section 42‑1‑360 of the 1976 Code, as last amended by Act 111 of 2007, is further amended by adding an appropriately numbered subsection at the end to read:

“( ) illegal immigrants whose illegal status was known to the employer at the time of the immigrant’s hire, and illegal immigrants whose illegal status was discovered by the employer during employment but before the injury. Illegal immigrants in these circumstances who are injured in a work‑related accident are granted the exclusive remedy of medical benefits pursuant to Chapter 10, Title 41.”

SECTION 3. Section 41‑10‑10(2) of the 1976 Code, as last amended by Act 463 of 1990, is further amended to read:

“(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. Wages also includes medical payments to illegal immigrants injured in a work‑related accident, but who are excluded from recovery under Title 42. These medical payments must be incurred as a direct result of the work‑related accident. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.”

SECTION 4. This act takes effect upon approval by the Governor.

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