**A** **BILL**

TO AMEND SECTION 42‑5‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO A PENALTY FOR FAILURE OF AN EMPLOYER TO SECURE WORKERS’ COMPENSATION INSURANCE FOR ITS EMPLOYEES, SO AS TO REQUIRE THE WORKERS’ COMPENSATION COMMISSION TO SEND A LETTER TO THE EMPLOYER GIVING HIM THIRTY DAYS BEFORE A PENALTY SHALL APPLY WHILE A CLAIM IS PENDING, AND PROVIDE THAT THE COMMISSION MAY PROMULGATE REGULATIONS BY WHICH AN EMPLOYER NOT ACTING IN GOOD FAITH WHILE FAILING TO SECURE WORKERS’ COMPENSATION INSURANCE SHALL NOT BE OFFERED THE BENEFITS OF THE THIRTY‑DAY GRACE PERIOD PROVIDED ABOVE.

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

SECTION 1. Section 42‑5‑40 of the 1976 Code, as last amended by Section 15, Part I, Act 111 of 2007, is further amended to read:

“Section 42‑5‑40. (A) ~~Any~~ An employer required to secure the payment of compensation under this title who refuses or neglects to secure ~~such~~ this compensation ~~shall~~ must be ~~punished by a fine of~~ fined one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than one hundred dollars for each day of ~~such~~ the refusal or neglect, and until the same ceases, and he ~~shall be~~ is liable during continuance of ~~such~~ the refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against ~~such~~ the employer to recover damages for personal injury or death by accident and in ~~any such~~ an action ~~such~~ the employer ~~shall~~ is not ~~be~~ permitted to defend upon any of the grounds mentioned in Section 42‑1‑510.

(B) The fine provided in this section may be assessed by the commission in an open hearing with the right of review and appeal as in other cases. All fines collected pursuant to this section must be submitted to the general fund.

(C)(1) Before a fine may be assessed and collected while a claim is pending, the commission shall send the offending employer a letter, by certified mail, return receipt requested, informing him of the penalty. The employer has thirty days to comply with the provisions of this title before the penalty may be assessed.

(2) The commission may promulgate regulations by which an employer not acting in good faith while failing to secure workers’ compensation insurance shall not be subject to the provisions of this subsection.”

SECTION 2. This act takes effect upon approval by the Governor.

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