**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑68‑145 SO AS TO PROVIDE THAT FOR PURPOSES OF DETERMINING AN INCENTIVE OR BUSINESS PREFERENCE PROGRAM BASED ON EMPLOYMENT, A COVERED EMPLOYEE IS CONSIDERED AN EMPLOYEE SOLELY OF THE CLIENT AND NOT THE LICENSEE; TO PROVIDE THAT FOR THE PURPOSES OF AN INCENTIVE OR BUSINESS PREFERENCE PROGRAM BASED ON THE NUMBER OF EMPLOYEES, A COVERED EMPLOYEE OR DIRECT EMPLOYEE OF THE CLIENT IS CONSIDERED AN EMPLOYEE SOLELY OF THE CLIENT BUT NOT THE LICENSEE; TO PROVIDE CERTAIN EMPLOYMENT INFORMATION A LICENSEE MAY AND MAY NOT BE REQUIRED TO PROVIDE; TO PROVIDE A LICENSEE MAY CHARGE A CLIENT A CERTAIN FEE; AND TO PROVIDE CERTAIN CONSIDERATIONS WITH RESPECT TO THE ENTERPRISE ZONE ACT OF 1995.

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

SECTION 1. Chapter 68, Title 40 of the 1976 Code is amended by adding:

“Section 40‑68‑145. (A) For purposes of determining an incentive or business preference program based on employment, a covered employee is considered an employee solely of the client, not the licensee. Notwithstanding that the professional employer organization is the W‑2 reporting employer, the client is entitled to the benefit of or continue to qualify for an incentive, business preference program, or other benefit arising from the employment of covered employees.

(B) For the purposes of an incentive or business preference program based on the number of employees, covered employees, and direct employees of the client, are considered employees solely of the client, but not the licensee.

(C) On request by the client, the state, or governmental entity, a licensee shall provide employment information required by the state or governmental entity responsible for the administration of the incentive or business preference program and necessary to support a request, claim, application, or other action by a client seeking an incentive or participation in a business preference program.

(D) In providing information required pursuant to subsection (C), a licensee may not be required to:

(1) complete forms on behalf of a client;

(2) attest, certify, and verify the accuracy of information originally provided by or based on information provided by the client to the licensee;

(3) create new information or records; or

(4) provide employment information older than two years.

(E) A licensee may charge a client a fee for information provided pursuant to subsection (C).

(F) For purposes of the Enterprise Zone Act of 1995:

(1) a client is considered to be current with respect to withholding tax if the licensee is current with respect to the withholding tax;

(2) a licensee shall apply a credit awarded to the withholding obligations of the client; and

(3) notwithstanding Sections 12‑10‑80(A)(6) and 12‑10‑81(B)(4), to the extent a return of an overpayment of withholding that results from claiming a job credit is not used as permitted by those sections, the client is liable and the licensee is not liable.”

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

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