

## Session 116 - (2005-2006)

**H 3205 General Bill, By Leach, Sandifer, Vaughn, Taylor, Walker, Mahaffey, Cato, Young, Whitmire, Edge, Toole, Hinson, Bingham, Merrill, Umphlett, Dantzler and Stewart**

**Summary:** Workers' Compensation Reform Act of 2005

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SOUTH CAROLINA WORKERS' COMPENSATION REFORM ACT OF 2005", BY ADDING SECTION 42-1-180 SO AS TO LIMIT THE DISABILITY RATING ESTABLISHED BY THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION TO A MAXIMUM OF ONE HUNDRED FIFTY PERCENT OF THE AMERICAN MEDICAL ASSOCIATION GUIDELINES FOR IMPAIRMENT; BY ADDING SECTION 42-1-190 SO AS TO ELIMINATE ANY COMPENSATION, LOST WAGES OR MEDICAL, PAYABLE TO THE INJURED WORKER WHEN ALCOHOL OR OTHER ILLEGAL SUBSTANCES ARE FOUND TO BE PRESENT IN THE PERSON'S BODY; BY ADDING SECTION 42-1-200 SO AS TO ELIMINATE COMPENSATION, LOST WAGES OR MEDICAL, PAYABLE TO THE INJURED WORKER WHEN THE ACCIDENT WAS INTENTIONAL, OR WHEN THE INJURED FAILED TO FOLLOW COMPANY, STATE OR FEDERAL POLICIES, RULES, AND REGULATIONS; BY ADDING SECTION 42-1-210 SO AS TO ELIMINATE ANY COMPENSATION, LOST WAGES OR MEDICAL, PAYABLE TO ANY INJURED WORKER WHEN THE INJURED WORKER IS AN ILLEGAL ALIEN AND HAS GAINED EMPLOYMENT THROUGH FRAUDULENT MEANS OR METHODS, OR BOTH; BY ADDING SECTION 42-1-378 SO AS TO ELIMINATE CONCURRENT JURISDICTION BETWEEN THE SOUTH CAROLINA WORKERS' COMPENSATION ACT AND THE FEDERAL EMPLOYERS' LIABILITY ACT, THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, OR ANY OF ITS EXTENSIONS, AND THE JONES ACT; BY ADDING SECTION 42-9-95 SO AS TO NOT PAY LOST WAGE COMPENSATION TO AN INJURED WORKER DURING ALL PERIODS OF TIME WHILE THE INJURED WORKER IS INCARCERATED; TO AMEND SECTION 42-1-80, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, SO AS TO CHANGE THE DEFINITION TO DEFINE "DIVISION" AS THE "SOUTH CAROLINA WORKERS' COMPENSATION DIVISION" AND DEFINE "DEPARTMENT" AS THE "SOUTH CAROLINA DEPARTMENT OF INSURANCE"; TO AMEND CHAPTER 3, TITLE 42, RELATING TO THE INDUSTRIAL COMMISSION, SO AS TO CHANGE THE NAME TO THE SOUTH CAROLINA WORKERS' COMPENSATION DIVISION OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE AND TO MAKE CORRESPONDING CHANGES IN OTHER PROVISIONS NECESSARY TO BE CONSISTENT WITH THIS CHANGE; TO AMEND CHAPTER 5, TITLE 42, RELATING TO INSURANCE AND SELF-INSURANCE UNDER THE PROVISIONS OF TITLE 42, SO AS TO MAKE CHANGES IN PROVISIONS CONSISTENT WITH THE TRANSFER OF POWERS, DUTIES, AND RESPONSIBILITIES FROM THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION; TO AMEND SECTION 42-7-80, RELATING TO THE PAYMENT OF AWARDS BY THE WORKERS' COMPENSATION COMMISSION, SO AS TO PROVIDE THAT AWARDS MUST INSTEAD BE AWARDED BY AN ADMINISTRATIVE LAW JUDGE; TO AMEND SECTION 42-7-200, AS AMENDED, RELATING TO THE WORKERS' COMPENSATION UNINSURED EMPLOYER'S FUND, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE INSTEAD OF WORKERS' COMPENSATION COMMISSION SHALL DETERMINE IF AN EMPLOYEE IS SUBJECT TO THE PROVISIONS OF TITLE 42; TO AMEND SECTION 42-7-310, AS AMENDED, RELATING TO THE ESTABLISHMENT OF THE SECOND INJURY FUND, SO AS TO PROVIDE THAT THE RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION ARE DIVIDED BETWEEN THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-9-30, AS AMENDED, RELATING TO THE AMOUNT OF COMPENSATION AND PERIOD OF DISABILITY FOR CERTAIN INJURIES, SO AS TO ELIMINATE THE PRESUMPTION OF TOTAL DISABILITY IN CASES WHERE THERE IS FIFTY PERCENT OR MORE LOSS OF USE OF THE BACK; TO AMEND SECTION 42-9-90, RELATING TO THE INCREASE IN COMPENSATION WHEN AN INSTALLMENT PAYMENT IS NOT PAID, SO AS TO MAKE CORRESPONDING CHANGES TO CONFORM TO THE TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-9-140, AS AMENDED, RELATING TO PAYMENT OF COMMUTED AMOUNTS TO A DECEASED EMPLOYEE WHEN THE EMPLOYEE LEAVES NO DEPENDENTS OR PARTIAL DEPENDENTS, SO AS TO MAKE CORRESPONDING CHANGES TO CONFORM TO THE TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-9-190, RELATING TO THE REQUIREMENT THAT AN INJURED EMPLOYEE WHO REFUSES SUITABLE EMPLOYMENT IS NOT ENTITLED TO COMPENSATION, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE SHALL APPROVE THE EMPLOYMENT INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-210, RELATING TO A DEDUCTION BY AN EMPLOYER OF PAYMENTS WHICH ARE NOT DUE AND

PAYABLE, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION APPROVE THE DEDUCTIONS; TO AMEND SECTION 42-9-230, AS AMENDED, RELATING TO THE DATE ON WHICH COMPENSATION PAYABLE UNDER THE AGREEMENT BECOMES DUE, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION DETERMINES WHEN INSTALLMENTS ARE MADE; TO AMEND SECTION 42-9-240, RELATING TO THE DATE ON WHICH COMPENSATION PAYABLE UNDER AN AWARD BECOMES DUE, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE DETERMINE THE DATE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-250, RELATING TO THE PAYMENT OF COMPENSATION MONTHLY OR QUARTERLY INSTEAD OF WEEKLY, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE MAKE THAT DETERMINATION INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-260, AS AMENDED, RELATING TO THE NOTICE REQUIRED WHEN DISABILITY PAYMENTS BEGIN, SO AS TO MAKE CORRESPONDING CHANGES TO CONFORM TO THE TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-9-270, RELATING TO NOTICE OF FINAL PAYMENT OF COMPENSATION BY THE EMPLOYER, SO AS TO PROVIDE THAT THE NOTICE BE SENT TO THE WORKERS' COMPENSATION DIVISION INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-301, RELATING TO LUMP-SUM PAYMENTS BY EMPLOYERS, SO AS TO MAKE CORRESPONDING CHANGES TO CONFORM TO THE TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-9-310, AS AMENDED, RELATING TO A LUMP-SUM PAYMENT ADMINISTERED BY A TRUSTEE, SO AS TO PROVIDE THAT THIS MUST BE DETERMINED BY AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-340, RELATING TO THE EFFECT OF PAYMENT OF A DEATH BENEFIT BY AN EMPLOYER IN GOOD FAITH TO CERTAIN DEPENDENTS, SO AS TO PROVIDE THAT THE WORKERS' COMPENSATION DIVISION INSTEAD OF THE WORKERS' COMPENSATION COMMISSION SHALL DECIDE BETWEEN DEPENDENTS WHEN THE EMPLOYER IS IN DOUBT AS TO THE RIGHTS OF THE CLAIMANTS; TO AMEND SECTION 42-9-360, AS AMENDED, RELATING TO ASSIGNMENTS OF COMPENSATION AND EXEMPTIONS FROM CLAIMS OF CREDITORS, SO AS TO PROVIDE THAT PAYMENT TO AN AUTHORIZED HEALTH CARE PROVIDER FOR SERVICES MUST BE MADE DURING A CERTAIN TIME UNLESS THE WORKERS' COMPENSATION DIVISION INSTEAD OF THE WORKERS' COMPENSATION COMMISSION HAS RECEIVED A REQUEST TO REVIEW THE MEDICAL BILL; TO AMEND SECTION 42-9-390, RELATING TO VOLUNTARY PAYMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE, SO AS TO PROVIDE THAT THE SETTLEMENT AGREEMENT MUST BE APPROVED BY THE WORKERS' COMPENSATION DIVISION INSTEAD OF A MEMBER OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-9-400, AS AMENDED, RELATING TO THE MANNER IN WHICH AN EMPLOYER OR INSURANCE CARRIER IS REIMBURSED FROM THE SECOND INJURY FUND, SO AS TO PROVIDE THAT THE DIRECTOR OF THE INDUSTRIAL COMMISSION INSTEAD OF A MAJORITY OF THE COMMISSION MAY ENTER INTO COMPROMISE SETTLEMENTS; TO AMEND SECTION 42-9-440, AS AMENDED, RELATING TO REPORTING FALSE STATEMENTS AND MISREPRESENTATIONS TO THE INSURANCE FRAUD DIVISION OF THE OFFICE OF ATTORNEY GENERAL, SO AS TO REQUIRE THE WORKERS' COMPENSATION DIVISION AND ADMINISTRATIVE LAW JUDGE DIVISION TO MAKE THE REPORT; TO AMEND SECTION 42-11-80, RELATING TO WILFUL MISREPRESENTATION BY AN EMPLOYEE THAT HE HAS NOT PREVIOUSLY SUFFERED FROM THE DISEASE WHICH IS THE CAUSE OF A DISABILITY OR DEATH, SO AS TO PROVIDE THAT THE WAIVER WHICH THIS EMPLOYEE MAY EXECUTE MUST BE APPROVED BY THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-11-100, AS AMENDED, RELATING TO THE AMOUNT OF COMPENSATION PAYABLE FOR A DISABILITY FROM AN OCCUPATIONAL DISEASE, SO AS TO PROVIDE THAT NO COMPENSATION MAY BE PAID FOR THE TIME THE EMPLOYEE REFUSES TO ACCEPT SUITABLE EMPLOYMENT WHEN ORDERED BY AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-11-120, RELATING TO THE PROCEDURE FOR DETERMINING CLAIMS, SO AS TO DELETE PROVISIONS REGARDING A MEDICAL QUESTION BEING REFERRED BY THE WORKERS' COMPENSATION COMMISSION TO THE MEDICAL BOARD; TO AMEND SECTION 42-13-50, RELATING TO THE APPORTIONMENT OF LIABILITY FOR COMPENSATION TO AN EMPLOYEE EXPOSED TO IONIZING RADIATION, SO AS TO PROVIDE THAT AN APPEAL OF AN AWARD IS TO AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE INDUSTRIAL COMMISSION AND PROVIDE THAT THE METHOD OF APPORTIONMENT MUST BE MADE BY AN ADMINISTRATIVE LAW JUDGE INSTEAD OF THE WORKERS' COMPENSATION COMMISSION; TO AMEND SECTION 42-13-80, RELATING TO THE AUTHORITY OF THE INDUSTRIAL COMMISSION TO DETERMINE THE MEDICAL SERVICES FOR AN IONIZING RADIATION INJURY OR DISABILITY, SO

AS TO TRANSFER THE AUTHORITY TO AN ADMINISTRATIVE LAW JUDGE; TO AMEND SECTION 42-13-90, RELATING TO AN EMPLOYEE'S RIGHT TO VOCATIONAL REHABILITATION WHO HAS BEEN INJURED BY RADIATION EXPOSURE, SO AS TO TRANSFER CERTAIN RESPONSIBILITIES TO THE ADMINISTRATIVE LAW JUDGE DIVISION FROM THE INDUSTRIAL COMMISSION; TO AMEND SECTION 42-13-100, RELATING TO CERTAIN SETTLEMENT BEING INVALID UNLESS APPROVED BY THE INDUSTRIAL COMMISSION, SO AS TO TRANSFER THIS AUTHORITY TO THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND SECTION 42-13-110, RELATING TO CERTAIN POWERS OF THE WORKERS' COMPENSATION COMMISSION, SO AS TO TRANSFER THESE POWERS TO THE WORKERS' COMPENSATION DIVISION; TO AMEND CHAPTER 15, TITLE 42, RELATING TO THE NOTICE OF AN ACCIDENT FILED BY AN EMPLOYEE, WHERE THE CLAIM MUST BE FILED AND THE FURNISHING OF MEDICAL TREATMENT AND SUPPLIES TO THE EMPLOYEE, SO AS TO TRANSFER CERTAIN RESPONSIBILITIES TO THE ADMINISTRATIVE LAW JUDGE DIVISION FROM THE WORKERS' COMPENSATION COMMISSION; TO AMEND CHAPTER 17, TITLE 42, RELATING TO THE AWARDING OF COMPENSATION TO AN INJURED EMPLOYEE, SO AS TO MAKE CORRESPONDING CHANGES TO CONFORM TO THE TRANSFER OF DUTIES AND RESPONSIBILITIES OF THE WORKERS' COMPENSATION COMMISSION TO THE WORKERS' COMPENSATION DIVISION AND THE ADMINISTRATIVE LAW JUDGE DIVISION; TO AMEND CHAPTER 19, TITLE 42, RELATING TO THE REQUIREMENT THAT EMPLOYERS SHALL KEEP RECORDS AND MAKE REPORTS REGARDING INJURIES RECEIVED BY EMPLOYEES IN THE COURSE OF THEIR EMPLOYMENT, SO AS TO TRANSFER CERTAIN RESPONSIBILITIES TO THE WORKERS' COMPENSATION DIVISION FROM THE WORKERS' COMPENSATION COMMISSION; AND TO REPEAL SECTION 42-1-90 RELATING TO THE DEFINITION OF "COMMISSION" UNDER THE PROVISIONS OF TITLE 42 AND SECTIONS 42-11-130 THROUGH 42-11-190 RELATING TO THE MEDICAL BOARD EMPLOYED TO DETERMINE CONTROVERSIAL MEDICAL QUESTIONS IN WORKERS' COMPENSATION CASES.

12/22/04	House	Prefiled
12/22/04	House	Referred to Committee on Labor, Commerce and Industry
01/11/05	House	Introduced and read first time HJ-125
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01/26/05	House	Member(s) request name added as sponsor: Cato, Young, Whitmire, Edge, Toole, Hinson, Bingham, Merrill, Umphlett, Dantzler
05/12/05	House	Member(s) request name added as sponsor: Stewart