

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding a section numbered 8.01-424.1, relating to settlement*  
3 *of third-party actions; deemed consent by employer.*

4 [S 520]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That the Code of Virginia is amended by adding a section numbered 8.01-424.1 as follows:**8 *§ 8.01-424.1. Settlement of third-party action; deemed consent by employer.*

9 *In any action or claim for damages by an employee, his personal representative, or other person*  
10 *against any person other than the employer, in which the employer has an interest pursuant to*  
11 *§ 65.2-309, where the employer fails to consent to an offer of settlement acceptable to the employee, his*  
12 *personal representative or other person, such person may petition the court where the action is pending*  
13 *for approval of the settlement. Where no action is pending, or such action is pending in a state other*  
14 *than Virginia, the petition may be filed in any circuit court in which venue will lie as to the employee*  
15 *pursuant to § 8.01-262. The petition shall state the compromise, its terms, and the reason therefor. The*  
16 *court in which such petition is filed shall require the convening of the parties in interest in person or by*  
17 *an authorized representative. The parties in interest shall be deemed convened if twenty-one days notice*  
18 *of the hearing and proposed compromise was served pursuant to §§ 8.01-296, 8.01-299, 8.01-300,*  
19 *8.01-301, or Rule 1:12 of the Rules of the Supreme Court of Virginia, as applicable. In the case of an*  
20 *insured employer, service shall also be made on the workers compensation insurer's registered agent or*  
21 *counsel. During the twenty-one day notice period, the person making the settlement offer to the*  
22 *employee shall make himself reasonably available to answer questions under oath by the employee,*  
23 *employer, or employer's workers compensation insurer concerning matters relating to such person's*  
24 *financial condition that are known or reasonably available to such person.*

25 *If the court determines that the settlement is fair and just to the parties in interest, it shall approve*  
26 *such settlement. In no event shall the court have jurisdiction to reduce or otherwise compromise the*  
27 *subrogation interest created pursuant to § 65.2-309. The employer, if aggrieved by the court's decision,*  
28 *may appeal. Should the employer's appeal be denied or decided adversely to the employer, the employer*  
29 *shall pay interest at the judgment rate on the full settlement amount until the date of the denial of the*  
30 *appeal or date the final adverse decision is rendered against the employer. Should the settlement include*  
31 *periodic payments into the future, the value of the settlement amount, discounted to present value, shall*  
32 *be determined in calculating interest due from the employer. Once the decision is final and all appeals,*  
33 *if any, have been exhausted, and because the employer's subrogation interest has not been compromised,*  
34 *the decision approving the settlement shall be deemed consent to the settlement by the employer.*

ENROLLED

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