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SENATE BILL NO. 520

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 22, 2002)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend the Code of Virginia by adding a section numbered 8.01-424.1, relating to settlement of third-party actions; deemed consent by employer.

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 8.01-424.1 as follows:**

§ 8.01-424.1. Settlement of third-party action; deemed consent by employer.

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

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