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## HOUSE BILL NO. 1402

Offered January 23, 2004

A BILL to amend and reenact §§ 8.01-66.4, 38.2-2209 and 38.2-3405 of the Code of Virginia, relating to subrogation rights.

Patrons—Byron, Black, McDonnell and O'Bannon

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-66.4, 38.2-2209 and 38.2-3405 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-66.4. Subrogation.

Any municipal corporation or any person, firm or corporation who may pay the charges for which a lien is provided in § 8.01-66.2 shall be subrogated to such lien pursuant to §§ 38.2-2209 and 38.2-3405.

§ 38.2-2209. Motor vehicle liability medical benefit insurer not to retain right of subrogation to recover from third party, exceptions.

~~No~~ A. Except as provided in subsection B, no policy or contract of bodily injury or property damage liability insurance that contains any representation by an insurer to pay all reasonable medical expenses incurred for bodily injury caused by accident to the insured or any relative or other person coming within the provisions of the policy, shall be issued or delivered by any insurer licensed in this Commonwealth upon any motor vehicle then principally garaged or principally used in this Commonwealth, if the insurer retains the right of subrogation to recover amounts paid on behalf of an injured person under the provision of the policy from any third party.

B. An insurer shall have a right of subrogation with respect to those expenses associated with any medical bills upon which (i) the injured insured relies in any personal injury action or (ii) the insured decedent's personal representative relies in any wrongful death action. Any recovery pursuant to such subrogation action shall be limited to 25 percent of the amounts paid on behalf of the injured insured. The subrogated insurer shall be required to pay a pro rata share of the legal fees and costs incurred by the injured insured or personal representative in the principal personal injury or wrongful death action.

§ 38.2-3405. Certain subrogation provisions and limitations upon recovery in hospital, medical, etc., policies forbidden.

A. ~~No~~ Except as provided in subsection D, no insurance contract providing hospital, medical, surgical and similar or related benefits, and no subscription contract or health services plan delivered or issued for delivery or providing for payment of benefits to or on behalf of persons residing in or employed in this Commonwealth shall contain any provision providing for subrogation of any person's right to recovery for personal injuries from a third person.

B. ~~No~~ Except as provided in subsection D, no such contract, subscription contract or health services plan shall contain any provision requiring the beneficiary of any such contract or plan to sign any agreement to pay back to any company issuing such a contract or creating a health services plan any benefits paid pursuant to the terms of such contract or plan from the proceeds of a recovery by such a beneficiary from any other source; provided, that this provision shall not prohibit an exclusion of benefits paid or payable under workers' compensation laws or federal or state programs, nor shall this provision prohibit coordination of benefits provisions when there are two or more such accident and sickness insurance contracts or plans providing for the payment of the same benefits. Coordination of benefits provisions may not operate to reduce benefits because of any benefits paid, payable, or provided by any liability insurance contract or any benefits paid, payable, or provided by any medical expense or medical payments insurance provided in conjunction with liability coverage.

C. Whenever benefits paid or payable under workers' compensation are excluded from coverage under the terms of any such contract, subscription contract or health services plan, the issuer thereof shall not exclude coverage for any medical condition pursuant to such exclusion if (i) an award of the Workers' Compensation Commission pursuant to § 65.2-704 denies compensation benefits relating to such medical condition and no request for review of such award is made pursuant to and within the time prescribed by § 65.2-705 or (ii) an award of the Workers' Compensation Commission, after review by the full Commission pursuant to § 65.2-705, denies compensation benefits relating to such medical condition. Following the entry of a workers' compensation award pursuant to clause (i) or (ii) having the effect of prohibiting the application of any such exclusion, the issuer shall immediately provide coverage for such medical condition to the extent otherwise covered under the contract, subscription contract or health services plan. If, upon appeal to the Court of Appeals or the Supreme Court, such medical

59 condition is held to be compensable under the Virginia Workers' Compensation Act (Title 65.2), the  
60 issuer may recover from the applicable employer or workers' compensation insurance carrier the costs of  
61 coverage for medical conditions found to be compensable under the Act.

62 *D. An insurer shall have a right of subrogation with respect to those expenses associated with any*  
63 *medical bills upon which (i) the injured insured relies in any personal injury action or (ii) the insured*  
64 *decedent's personal representative relies in any wrongful death action. Any recovery pursuant to such*  
65 *subrogation action shall be limited to 25 percent of the amounts paid on behalf of the injured insured.*  
66 *The subrogated insurer shall be required to pay a pro rata share of the legal fees and costs incurred by*  
67 *the injured insured or personal representative in the principal personal injury or wrongful death action.*