

2008 SESSION

LEGISLATION NOT PREPARED BY DLS
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089856492

HOUSE BILL NO. 1531

Offered January 18, 2008

A *BILL to amend and reenact § 56-441 of the Code of Virginia, relating to liability for injury to employee.*

Patron—Ebbin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-441 of the Code of Virginia is amended and reenacted as follows:

§ 56-441. Liability for injury to employee.

Every corporation operating a railroad in this Commonwealth, whether such corporation be created under the laws of this Commonwealth or otherwise, shall be liable in damages for any and all injury sustained by any employee of such corporation under the following circumstances:

(1) When such injury results from the wrongful act, neglect or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and

(2) When such injury results from the wrongful act, neglect or default of a coemployee engaged in another department of labor from that of the employee injured or of a coemployee (notwithstanding the fact that the party injured had the right to direct the services of the coemployee) in the performance of any duty on or about the same or another train of cars, or on or about an engine, or of a coemployee who has charge of any switch, signal point or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders.

(3)(a) Every railroad corporation and railway company shall provide or make available to every member of an operating crew involved in an accident on its railway or right of way which results in loss of life or serious bodily injury, counseling services or other critical incident stress debriefing services within 48 hours, provided that the engineer or other operating crew member involved in said accident shall be relieved from duty with compensation and applicable benefits at the site of said accident for a minimum of three days; provided, further, that said leave may be without compensation and benefit if the railroad corporation makes the affirmative showing that the accident was due to negligence of an engineer or other operating crew members; provided however, that any person who is otherwise eligible for these benefits and who has been found to have not acted negligently shall not be precluded from participation due to the negligence of a fellow crew member.

(3)(b) Any engineer returning to duty following such leave shall, if he so requests, be assigned an assistant engineer or other qualified person who shall accompany him for such reasonable time as may be necessary to guarantee the public safety. Any engineer or crew member may be subject to an examination at the discretion of the employer, pertaining to any mental or emotional impairment caused by said incident during the period of leave or upon return to duty by a qualified medical practitioner designated by the employer.

(3)(c) The Department shall promulgate rules and regulations necessary for the implementation and enforcement of the provisions of this section provided however that any person who is otherwise eligible for these benefits and who has been found to have not acted negligently shall not be precluded from participation due to the negligence of a fellow crew member.

When it shall appear in the evidence at the trial of any action for damages that the accident occurred while the employee was working on an engine or on a car standing upon a track it shall be no defense to such action for the defendant railroad to show that such engine or car was guarded by a derailer or a blue flag or in any other manner. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby.

When death, whether instantaneous or otherwise, results from any injury to any employee of such corporation received as aforesaid, the personal representatives of such employee shall have a right of action therefor against such corporation and may recover damages in respect thereof.

Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section or any part thereof shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative of any right or remedy to which he is now entitled under the laws of this Commonwealth.

The provisions of this section shall always be so restricted in their application as not to conflict with

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59 any of the provisions of the Constitution or laws of the United States and as if necessary limitation upon
60 their interpretation had been herein expressed in each case.