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SENATE BILL NO. 212

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 11, 2008)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend the Code of Virginia by adding a section numbered 38.2-5008.1 and to amend the second enactment of Chapter 919 of the Acts of Assembly of 2006 by adding a section numbered 2, relating to the Virginia Birth-Related Neurological Injury Compensation Act; right to confront and cross-examine witnesses.*

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 38.2-5008.1 as follows:***§ 38.2-5008.1. Right to confront and cross-examine witnesses.**Upon a timely motion, all parties to a claim under this chapter shall have the right to confront and cross-examine witnesses. In pursuing that right, a party shall not be precluded from conducting depositions by oral examination or cross-examination at a hearing of any witnesses from whom evidence is elicited.***2. That the second enactment of Chapter 919 of the Acts of Assembly of 2006 is amended by adding a section numbered 2 as follows:***§ 2. Right to confront and cross-examine witnesses; right to de novo review.**Notwithstanding any other provision of law, any claimant who timely filed a claim and after timely seeking and being denied an opportunity to conduct depositions by oral examination or otherwise being denied the opportunity to confront or cross-examine witnesses and was denied an award of benefits, shall have the right to have the determination against that claim vacated and the claim redetermined de novo by filing a petition with the Commission seeking to have the determination against that claim vacated. Such petition shall be filed on or before July 1, 2009, and may be filed regardless of whether or not the party has filed for review of the denied claim. Upon receipt of such a petition, the Commission shall vacate the order denying benefits previously entered, place the matter on the hearing docket, administer the claim and make a determination on the merits of the claim de novo, as if no previous filing, hearing, determination, review or dismissal of that claim had occurred, except that the Commission shall not be required to request the panel of physicians set forth in subsection B of § 38.2-5008 to issue a new report.*