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HOUSE BILL NO. 1705

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 6, 2013)

(Patron Prior to Substitute—Delegate Stolle)

A *BILL to amend and reenact §§ 8.01-66.5, 8.01-66.6, 19.2-305.1, and 19.2-368.15 of the Code of Virginia, relating to Criminal Injuries Compensation Fund; lien and restitution.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.5, 8.01-66.6, 19.2-305.1, and 19.2-368.15 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-66.5. Written notice required.

A. No lien provided for in § 8.01-66.2 ~~or~~ §, 8.01-66.9, or 19.2-368.15 shall be created or become effective in favor of the Commonwealth, an institution thereof, or a hospital, nursing home, physician, nurse, physical therapist, or ambulance service unless and until a written notice of lien setting forth the name of the Commonwealth, or the institution, hospital, nursing home, physician, nurse, physical therapist, or ambulance service and the name of the injured person, has been served upon or given to the person, firm or corporation whose negligence is alleged to have caused such injuries, or to the attorney for the injured party, or to the injured party. Such written notice of lien shall not be required if the attorney for the injured party knew that medical services were either provided or paid for by the Commonwealth.

B. In any action for personal injuries or wrongful death against a nursing home or its agents, if the Department of Medical Assistance Services has paid for any health care services provided to the injured party or decedent relating to the action, the injured party or personal representative shall, within 60 days of filing a lawsuit or 21 days of determining that the Department of Medical Assistance Services has paid for such health care services, whichever is later, give written notice to the Department of Medical Assistance Services that the lawsuit has been filed. The Department of Medical Assistance Services shall provide a written response, stating the amount of the lien as of the date of their response, within 60 days of receiving a request for that information from the injured party or personal representative.

§ 8.01-66.6. Liability for reasonable charges for services.

The notice set forth in subsection A of § 8.01-66.5, when served upon or given to the person, firm or corporation whose negligence is alleged to have caused injuries or to the attorney for the injured party, shall have the effect of making such person, firm, corporation or attorney liable for the reasonable charges for the services rendered the injured person to the extent of the amount paid to or received by such injured party or his personal representative exclusive of attorney's fees, but, except in liens created under § 8.01-66.9 or 19.2-368.15, not in excess of the maximum amounts prescribed in § 8.01-66.2.

§ 19.2-305.1. Restitution for property damage or loss; community service.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while

60 he is free on probation or work release or following his release from confinement. Additionally, the
61 court may order that the defendant make restitution during his confinement, if feasible, based upon both
62 his earning capacity and net worth as determined by the court at sentencing.

63 D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and
64 the terms and conditions thereof. If community service work is ordered, the court shall determine the
65 terms and conditions upon which such work shall be performed. The court shall include such findings in
66 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,
67 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the
68 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or
69 providing restitution shall, at the time of sentencing, obtain the social security number of each
70 defendant.

71 E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the
72 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the
73 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before
74 either such action is taken.

75 E1. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be
76 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the
77 court. For purposes of this subsection, "victim" means a person who is depicted in a still or
78 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

79 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
80 18.2-374.1:1, or 18.2-374.3.

81 F. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no
82 longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal
83 Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum
84 sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims.
85 Before making the deposit he shall record the name, last known address and amount of restitution due
86 each victim appearing from the clerk's report to be entitled to restitution.

87 G. *If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the*
88 *victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments*
89 *to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then*
90 *upon presentation by the Fund of a written request that sets forth the amount of payments made by the*
91 *Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as*
92 *much of the restitution collected as will reimburse the Fund for its payments made to the victim or on*
93 *the victim's behalf.*

94 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**
95 **Commonwealth; disposition of funds collected.**

96 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the
97 extent of such award, to any right or right of action accruing to the claimant or the victim to recover
98 payments on account of losses resulting from the crime with respect to which the award is made.
99 However, *except as otherwise provided in subsection G of § 19.2-305.1*, the Commonwealth shall not
100 institute any proceedings in connection with its right of subrogation under this section within one year
101 from the date of commission of the crime, unless any claimant or victim's right or action shall have
102 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted
103 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries
104 Compensation Fund.

105 *Whenever any person receives an award from the Criminal Injuries Compensation Fund, the*
106 *Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof*
107 *compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or*
108 *his personal representative against the person, firm, or corporation who is alleged to have caused such*
109 *injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,*
110 *but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or*
111 *motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall*
112 *become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to*
113 *§ 8.01-66.6.*