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SENATE BILL NO. 770

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 2, 2015)

(Patron Prior to Substitute—Senator McEachin)

A *BILL to amend and reenact § 65.2-307 of the Code of Virginia, relating to the Virginia Workers' Compensation Act; exclusivity of remedies.*

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-307 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-307. Employee's rights under Act exclude all others; exception.

A. The rights and remedies herein granted to an employee when his employer and he have accepted the provisions of this title respectively to pay and accept compensation on account of injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death.

B. *If a court of the Commonwealth determines that the accident, injury, disease, or death is barred by this section, that finding shall be res judicata between those same parties and estop them and their agents, employees, or assigns and the uninsured employer's fund or any guarantee fund or responsible entities or statutory employer from arguing before the Commission that the accident, injury, disease, or death did not arise out of and in the course and scope of the employee's employment. If the Commission determines that the accident, injury, disease, or death did not arise out of or in the course and scope of such employee's employment, then that finding shall be res judicata and estop those same parties and their agents, employees, and assigns from arguing before a court of the Commonwealth that the accident is barred by the exclusivity provisions of the Act. However, except in the case of a self-insured employer or business entity closely related to a party to the court proceeding, in order for the court finding to be res judicata, notice shall be provided in the same manner as allowed in subsection F of § 38.2-2206 or § 8.01-288 to any entity or person sought to be bound. In addition, any such entities or persons so notified shall be given the same opportunity to be heard in that court proceeding as a party to the same, but limited to the issue of whether the accident, injury, disease, or death arose out of and in the course and scope of the employee's employment. Failure to provide notice to any party to either the court or Commission proceeding shall not affect the rights, privileges, or obligations of the parties, but only the applicability of this subsection and only as stated herein.*

C. Notwithstanding this exclusion, nothing in the Act shall bar an employer from voluntarily agreeing to pay an employee compensation above and beyond those benefits provided for in the Act. Nothing herein, however, shall be deemed to affect or alter any existing right or remedy of the employer or employee under the Act.