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## SENATE BILL NO. 239

Offered January 13, 2016

Prefiled January 6, 2016

A *BILL to amend and reenact §§ 65.2-309 and 65.2-800 of the Code of Virginia, relating to workers' compensation; right of action against other party.*

Patron—Petersen

Referred to Committee on Commerce and Labor

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

**1. That §§ 65.2-309 and 65.2-800 of the Code of Virginia are amended and reenacted as follows:**

**§ 65.2-309. Lien against settlement proceeds or verdict in third party suit; subrogation of employer to employee's rights against third parties; evidence; recovery; compromise.**

A. A claim against an employer under this title for injury, occupational disease, or death benefits shall create a lien on behalf of the employer against any verdict or settlement arising from any right to recover damages which the injured employee, his personal representative, or other person may have against any other party for such injury, occupational disease, or death, and such employer also shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative, the legal liability of such other party. The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages. *"Other party" includes any person whose negligence or intentional act results in the injured employee's injury, occupational disease, or death, without regard to whether (i) the person was performing work that is part of the trade, business, or occupation of the injured employee's employer, (ii) the injured employee's employer is a statutory employer of the person, or (iii) the person is a statutory coemployee of the injured employee; however, "other party" shall not include (a) the injured employee's employer or (b) a fellow employee of the injured employee.*

B. Any amount collected by the employer under the provisions of this section in excess of the amount paid by the employer or for which he is liable shall be held by the employer for the benefit of the injured employee, his personal representative, or other person entitled thereto, less a proportionate share of such amounts as are paid by the employer for reasonable expenses and ~~attorney's~~ attorney fees as provided in § 65.2-311.

C. No compromise settlement shall be made by the employer in the exercise of such right of subrogation without the approval of the Commission and the injured employee or the personal representative or dependents of the deceased employee being first obtained.

D. If an injured employee, his personal representative, or a person acting on behalf of the injured employee receives the proceeds of the settlement or verdict and the employer's lien pursuant to subsection A has not been satisfied, the employer shall have the right to recover its lien either as a credit against future benefits or through a civil action against the person who received the proceeds.

**§ 65.2-800. Duty to insure payment of compensation; effect of insurance.**

A. Every employer subject to the compensation provisions of this title shall insure the payment of compensation to his employees in the manner hereinafter provided. While such insurance remains in force he or those conducting his business shall only be liable to an employee for personal injury or death by accident to the extent and in the manner herein specified.

B. To ensure that all employers who are required to have workers' compensation insurance under this title have notice of such requirement, the appropriate official of a county, city, or town who licenses employers to conduct business under Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 or the State Corporation Commission who charters employers to conduct business under § 12.1-12 shall provide employers requesting such licenses or charters on and after January 1, 1989, with information concerning statutory requirements for such insurance coverage. The Workers' Compensation Commission shall prepare such information and distribute it to such licensing or chartering officials. The failure of the local official or the State Corporation Commission to give such notice to an employer shall not relieve the employer of the duty of acquiring insurance as required by this title.

C. As used in this section, the words "those conducting his business" shall include any person whose act results in an injury or death compensable under this title and arises out of and in the course of employment by an employer who is or may be liable for the payment of compensation. A person other than an employer or ~~statutory employer~~, or a person employed by ~~either the employer~~, whose acts result in such injury or death shall be deemed an "other party" within the meaning of § 65.2-309.

INTRODUCED

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