

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-309 of the Code of Virginia, relating to workers' compensation;*
3 *lien of employer; notice and approval.*

4 [H 1659]
5 Approved

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

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

8 **§ 65.2-309. Lien against settlement proceeds or verdict in third party suit; subrogation of**
9 **employer to employee's rights against third parties; evidence; recovery; compromise.**

10 A. A claim against an employer under this title for injury, occupational disease, or death benefits
11 shall create a lien on behalf of the employer against any verdict or settlement arising from any right to
12 recover damages which the injured employee, his personal representative or other person may have
13 against any other party for such injury, occupational disease, or death, and such employer also shall be
14 subrogated to any such right and may enforce, in his own name or in the name of the injured employee
15 or his personal representative, the legal liability of such other party. The amount of compensation paid
16 by the employer or the amount of compensation to which the injured employee or his dependents are
17 entitled shall not be admissible as evidence in any action brought to recover damages.

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

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

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

30 E. *Any arbitration held by the employer in the exercise of such right of subrogation (i) shall be*
31 *limited solely to arbitrating the amount and validity of the employer's lien, (ii) shall not affect the*
32 *employee's rights in any way, and (iii) shall not be held unless:*

33 1. *Prior to the commencement of such arbitration the employer has provided the injured employee*
34 *and his attorney, if any, with an itemization of the expenses associated with the lien that is the subject*
35 *of the arbitration;*

36 2. *Upon receipt of the itemization of the lien, the employee shall have 21 days to provide a written*
37 *objection to any expenses included in the lien to the employer, and if the employee does not do so any*
38 *objections to the lien to be arbitrated shall be deemed waived;*

39 3. *The employer shall have 14 days after receipt of the written objection to notify the employee of*
40 *any contested expenses that the employer does not agree to remove from the lien, and if the employer*
41 *does not do so any itemized expense objected to by the employee shall be deemed withdrawn and not*
42 *included in the arbitration; and*

43 4. *Any contested expenses remaining shall have been submitted to the Commission for a*
44 *determination of their validity and the Commission has made such determination of validity prior to the*
45 *commencement of the arbitration.*