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SENATE BILL NO. 1175

Offered January 11, 2017

Prefiled January 10, 2017

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

Patrons—Chafin and Surovell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-309 of the Code of Virginia is 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.

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 fees as provided in § 65.2-311.

C. No compromise settlement or arbitration, including those associated with the employer's lien, shall be made or held 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.

E. No proceeding brought by the employer to recover its lien, either in whole or in part, shall be initiated against a party other than an employee without prior notice to the Commission and the injured employee or the personal representative or dependents of the deceased employee. In any such proceeding, the injured employee or the personal representative or dependents of the deceased employee shall be permitted to intervene as a matter of right.

INTRODUCED

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