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**HOUSE BILL NO. 1361**

Offered January 11, 2006

Prefiled January 11, 2006

*A BILL to amend and reenact § 65.2-309 of the Code of Virginia, relating to workers' compensation; primary coverage; subrogation of employer to employee's rights against third parties.*

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Patron—Bell

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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 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.

*E. Notwithstanding any provision of this title to the contrary, if an employee suffers an injury compensable under this title that results from the tortious act or omission of a third party, and the third party's liability for the damages sustained by the employee as a result of the tortious act or omission is insured under a valid policy of insurance, then the third party's insurance policy shall provide the primary coverage for compensating the injured employee for covered injuries to the extent provided in such policy, and the employer's workers' compensation insurance policy shall provide secondary coverage for compensation to which the employee is entitled under this title only to the extent that the coverage provided under the third party's liability policy does not cover such compensation of the employee.*

INTRODUCED

HB1361