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HOUSE BILL NO. 939

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 10, 2012)

(Patron Prior to Substitute—Delegate Lingamfelter)

A BILL to amend and reenact § 2.2-804 of the Code of Virginia, relating to the Department of Accounts; recovery of erroneous or improper payments to state officers and employees.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-804 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-804. Recovery of certain improper payments to state officers and employees.

If any officer or employee of the Commonwealth, whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.) of this title, contrary to any applicable statute, regulation or written policy of the Commonwealth, obtains or authorizes any other officer or employee to obtain any compensation or other payment to which an employee is not entitled, and upon the written request of his employer, fails or refuses to return or reimburse such compensation or payment, then both the employee who received the payment to which he was not entitled and the employee who authorized the payment shall be liable for repayment to the employer. Liability shall not attach unless such authorization was given with actual or constructive knowledge that the recipient employee was not entitled to such compensation or payment.

As long as he remains an officer or employee of the Commonwealth, and liability is admitted, his employer may recover the compensation or payment from any compensation or other payments to which the officer or employee is entitled as an administrative offset pursuant to § 2.2-4806. However, the offset shall not exceed the amount allowed pursuant to § 8.01-512.3. If the officer or employee leaves state service, liability is disputed or recovery cannot be accomplished, the employer may request the Attorney General to bring an action for restitution pursuant to this section, and the court may award the prevailing party costs and reasonable attorneys' fees.

A. Any officer or employee of the Commonwealth who obtains any compensation or payment to which the officer or employee is not entitled shall be liable for repayment to the employer. Such recipient officer or employee shall not be liable for repayment if the recipient officer or employee proves by a preponderance of the evidence that the improper payment occurred through no fault of the recipient officer or employee and such officer or employee had no actual knowledge of the error and could not have reasonably detected the error.

B. Any officer or employee of the Commonwealth who authorizes any other officer or employee to obtain any compensation or payment to which the recipient officer or employee is not entitled, where such authorization is made with actual or constructive knowledge that the recipient officer or employee was not entitled to such compensation or payment, shall be liable for repayment to the employer.

C. When a change or error in records results in any officer or employee receiving any compensation or payment to which he is not entitled, upon discovery of the improper payment the employer shall take appropriate action to correct the error as soon as practicable and adjust future payments to the correct compensation or payment amount.

D. If the officer or employee leaves state service, liability is disputed, or recovery cannot otherwise be accomplished, the employer shall request the Attorney General to bring an action for restitution pursuant to this section in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq.). Claims under this section may be compromised pursuant to and consistent with § 2.2-514.

E. If the officer or employee (i) does not dispute liability under subsection A or B, (ii) receives overpayments stemming from erroneous good faith under-withholdings for retirement, health insurance, or other benefit program enrollments, (iii) receives overpayments of less than \$500 from erroneous good faith wage, salary, or expense reimbursements, or (iv) is determined to be liable by a court of competent jurisdiction, the employer shall be authorized to use payroll deductions to recover the erroneous payments made to the officer or employee. Payroll deductions made pursuant to this section shall be limited to 25 percent of disposable earnings as defined in subsection (d) of § 34-29.

F. The provisions of this section shall apply to all officers and employees of the Commonwealth whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.).

G. The provisions of this section shall not apply to good faith disbursements made to beneficiaries of the Virginia Retirement System.

HOUSE SUBSTITUTE

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