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SENATE BILL NO. 1299
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 20, 2025)
(Patron Prior to Substitute—Senator McPike)

A *BILL to amend and reenact § 65.2-307 of the Code of Virginia, relating to workers' compensation; injury or death caused by employer's gross negligence or willful misconduct; cause of action.*

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-307 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-307. Employee's rights under Act exclude all others; exceptions.

A. The rights and remedies herein granted to an employee when his employer and he have accepted the provisions of this title respectively to pay and accept compensation on account of injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death, *except that if it is alleged that such injury or death is caused by such employer's gross negligence or willful misconduct, the employee may either claim compensation under this title or maintain an action at law for damages against the employer. Every action for injury or death caused by an employer's gross negligence or willful misconduct shall be brought within two years after the cause of action accrues.*

B. If a court of the Commonwealth makes a finding in a final unappealed order based on an evidentiary hearing or a factual stipulation of the parties and participants thereto that the cause of action relating to an accident, injury, disease, or death is barred by this section, that finding shall be res judicata between those same parties and estop them and any employer, uninsured employer's fund, guarantee fund, responsible entities, or statutory employer from arguing before the Commission that the accident, injury, disease, or death did not arise out of and in the course of such employee's employment. If the Commission or a court on appeal from the Commission makes a finding in a final unappealed order based on an evidentiary hearing, hearing on the record, or a factual stipulation of the parties that the claims relating to an accident, injury, disease, or death did not arise out of or in the course of such employee's employment, then that finding shall be res judicata and estop those same parties from arguing before a court of the Commonwealth that the accident is barred by the exclusivity provisions of the Act. However, except in the case of a self-insured employer or business entity closely related to a party to the court proceeding, in order for the court finding to be res judicata as to a non-party, notice shall be provided in the same manner as allowed in subsection F of § 38.2-2206 or § 8.01-288 to any employer, uninsured employer's fund, guarantee fund, responsible entities, or statutory employer sought to be bound. In addition, any such entities so notified shall be given the same opportunity to be heard in that court proceeding as a party to the same, but limited to the issue of whether the accident, injury, disease, or death arose out of and in the course of the employee's employment. Failure to provide notice to any party to the court proceeding shall not affect the rights, privileges, or obligations of said parties thereto but shall affect only the applicability of this subsection and only as stated herein. Furthermore, the findings by either the Commission or the court under this subsection shall not prevent the parties and participants to those proceedings from raising or relying upon any and all other available defenses.

C. Notwithstanding this exclusion, nothing in the Act shall bar an employer from voluntarily agreeing to pay an employee compensation above and beyond those benefits provided for in the Act. Nothing herein, however, shall be deemed to affect or alter any existing right or remedy of the employer or employee under the Act.

SENATE SUBSTITUTE

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