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HOUSE BILL NO. 426

Offered January 14, 2026

Prefiled January 12, 2026

A BILL to amend and reenact § 65.2-313 of the Code of Virginia, relating to workers' compensation; employer's offset in event of recovery.

Patron—LeVere Bolling

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-313 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-313. Method of determining employer's offset in event of recovery under § 65.2-309 or § 65.2-310.

A. In any action or claim for damages by an employee, his personal representative or other person against any person other than the employer under § 65.2-310, or in any action brought, or claim asserted, by the employer under his right of subrogation provided for in § 65.2-309, if a recovery is effected, the employer shall pay to the employee a percentage of each further entitlement as it is submitted equal to the ratio the total attorney's fees and costs bear to the total third-party recovery until such time as the accrued post-recovery entitlement equals that sum which is the difference between the gross recovery and the employer's compensation lien.

If, at the time such recovery is effected, the claimant is under an award for lifetime medical benefits, the lifetime medical benefits award shall remain in full force and effect and the claimant shall not be required to file additional claims for medical care and treatment that is causally related to the injury or occupational disease with an authorized treating physician. If, at the time such recovery is effected, the claimant is under an award for ongoing indemnity, the indemnity award shall remain in full force and effect, subject to the offset provided pursuant to this section.

B. No award following recovery of compensation under § 65.2-309 or 65.2-310 shall be suspended, modified, or terminated solely on the basis of an employee's third-party recovery or the existence of an employer's credit pursuant to this section. The employer's credit pursuant to this section shall be applied as a continuing, pro rata reduction to benefits otherwise payable under an existing award until the employer's required credit is exhausted. During the offset period, the employer shall remain liable to make periodic payments to the claimant, reduced by the pro rata ratio, and shall continue to reimburse the claimant's proportionate share of attorney fees and costs on each payment as provided in this section.

C. In ordering payments under this section, the Commission shall take into account any apportionment made pursuant to § 65.2-311.

~~For the purposes of this section, "entitlement" means compensation and expenses for medical, surgical and hospital attention and funeral expenses to which the claimant is entitled under the provisions of this title, which entitlements are related to the injury for which the third-party recovery was effected.~~