

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-313 of the Code of Virginia, relating to workers' compensation;*
 3 *employer's offset in event of recovery.*

4 [H 426]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 65.2-313 of the Code of Virginia is amended and reenacted as follows:**8 **§ 65.2-313. Method of determining employer's offset in event of recovery under § 65.2-309 or**
 9 **§ 65.2-310.**

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

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

23 B. *No award following recovery of compensation under § 65.2-309 or 65.2-310 shall be suspended,*
 24 *modified, or terminated solely on the basis of an employee's third-party recovery or the existence of an*
 25 *employer's credit pursuant to this section. The employer's credit pursuant to this section shall be applied as a*
 26 *continuing, pro rata reduction to benefits otherwise payable under an existing award until the employer's*
 27 *required credit is exhausted. During the offset period, the employer shall remain liable to make periodic*
 28 *payments to the claimant, reduced by the pro rata ratio. In addition, during the offset period, the claimant*
 29 *may make payment for medical expenses that fall under the medical award, and if so, the employer shall*
 30 *reimburse the claimant's proportionate share of attorney fees and costs on any and all payments made by the*
 31 *claimant as provided in this section until the employer's credit is exhausted.*

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

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

ENROLLED

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