**A** **BILL**

TO AMEND SECTION 42‑1‑560, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NOTICE REQUIREMENT FOR FILING AN ACTION AGAINST A THIRD PARTY IN A WORKERS’ COMPENSATION CLAIM, SO AS TO MAKE THE FILING OF A NOTICE FORM PERMISSIVE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 42‑1‑560(b) of the 1976 Code is amended to read:

“(b) The injured employee or, in the event of his death, his dependents, shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his or their rights against the third party~~; provided, that action against the third party must be commenced not later than one year after the carrier accepts liability for the payment of compensation or makes payment pursuant to an award under this title, except as hereinafter provided~~. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier’s lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g). Notice of the commencement of the action ~~shall~~ must be given ~~within thirty days thereafter~~ to the Workers’ Compensation Commission, the employer and carrier upon a form prescribed by the Workers’ Compensation Commission. Provided however, failure to notify the Workers’ Compensation Commission, the employer, and the carrier upon a form prescribed by the Workers’ Compensation Commission does not constitute an election of remedy and shall not cause dismissal of either the workers’ compensation claim or the third‑party claim.”

SECTION 2. This act takes effect upon approval by the Governor.

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