~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

May 10, 2022

**H. 4321**

Introduced by Reps. J.E. Johnson, Murphy, Hardee, Bailey, Jordan, Brittain, Kirby, Hart, McCravy and West

S. Printed 5/10/22--S.

Read the first time March 29, 2022.

**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.

Amend Title To Conform

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

SECTION 1. Sections 42-1-560(b) and (c) of the 1976 Code are 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 prior to the expiration of the time in which such action may be brought, and provided ~~after~~ the carrier has ~~accepts~~ accepted liability for the payment of compensation or ~~makes~~  made 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 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, that 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.

(c) When there is less than one year remaining prior to the expiration of the time in which an action against a third party must be commenced, and provided the carrier has accepted liability for the payment of compensation or made payment pursuant to an award under this title,~~If, prior to the expiration of the one‑year period referred to in subsection (b), or within thirty days prior to the expiration of the time in which such action may be brought,~~  and the injured employee, or, in event of his death, the person entitled to sue therefor shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, the person entitled to sue therefor shall pass by assignment to the carrier; provided, that the assignment shall not occur less than twenty days after the carrier has notified the injured employee or, in the event of his death, his personal representative or other person entitled to sue therefor in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of ninety days after the assignment, the carrier shall give the Workers’ Compensation Commission, the injured employee, or, in event of his death, his dependents and any other person entitled to sue therefor notice, upon a form prescribed by the Workers’ Compensation Commission, that action has been or will be commenced against the third party. Failure to give this notice, or to commence the action at least thirty days prior to the expiration of the time within which such action may be brought, shall operate as a reassignment of the right of action to the injured employee, or, in event of his death, his personal representative or other person entitled to sue therefor, and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

If the carrier as assignee recovers in an action:

(1) for injury, an amount in excess of the sum of the total of benefits paid or provided the injured employee and the reasonable expenses, including attorneys’ fees, incurred in making such recovery; or

(2) for death, an amount on behalf of the dependents of the employee in excess of the benefits paid the dependents, and the reasonable expenses, including attorneys’ fees, incurred in making the recovery, the excess shall be applied as a credit against future compensation and other benefits for the same injury or death and shall be distributed in accordance with subsection (g).”

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

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