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HOUSE BILL NO. 939

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 2.2-804 of the Code of Virginia, relating to the Department of Accounts; recovery of erroneous or improper payments to state officers and employees.

Patrons—Lingamfelter, Ingram, Poindexter, Tata and Torian

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-804 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-804. Recovery of certain improper payments to state officers and employees.

If any officer or employee of the Commonwealth, whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.) of this title, contrary to any applicable statute, regulation or written policy of the Commonwealth, obtains or authorizes any other officer or employee to obtain any compensation or other payment to which an employee is not entitled, and upon the written request of his employer, fails or refuses to return or reimburse such compensation or payment, then both the employee who received the payment to which he was not entitled and the employee who authorized the payment shall be liable for repayment to the employer. Liability shall not attach unless such authorization was given with actual or constructive knowledge that the recipient employee was not entitled to such compensation or payment.

As long as he remains an officer or employee of the Commonwealth, and liability is admitted, his employer may recover the compensation or payment from any compensation or other payments to which the officer or employee is entitled as an administrative offset pursuant to § 2.2-4806. However, the offset shall not exceed the amount allowed pursuant to § 8.01-512.3. If the officer or employee leaves state service, liability is disputed or recovery cannot be accomplished, the employer may request the Attorney General to bring an action for restitution pursuant to this section, and the court may award the prevailing party costs and reasonable attorneys' fees.

A. Any officer or employee of the Commonwealth who, contrary to any applicable statute, regulation, or written policy of the Commonwealth, knowingly authorizes an officer or employee to obtain any compensation or other payment to which the recipient officer or employee is not entitled, and such authorization is made with actual or constructive knowledge that the recipient officer or employee was not entitled to such compensation or payment, shall be liable for repayment to the employer.

B. Any officer or employee of the Commonwealth who, contrary to any applicable statute, regulation, or written policy of the Commonwealth, knowingly obtains any compensation or other payment to which the officer or employee is not entitled, shall be liable for repayment to the employer. Such officer or employee shall not be liable for repayment if it is determined that the improper payment occurred through no fault of the recipient officer or employee and such officer or employee had no actual knowledge of or could not have reasonably detected the error.

C. When a change or error in records results in any officer or employee receiving any compensation or other payment to which he is not entitled, the employer shall, subject to the provisions of subsections A and B, correct the error and, so far as practicable, adjust the payments to the correct compensation or payment amount.

D. If liability is determined, the employer shall be authorized to seek compromise and settlement of erroneous overpayments with the approval of the Attorney General, pursuant to and consistent with § 2.2-514 and as approved by the Governor or his designee. If so approved, the employer shall be authorized to use payroll deductions to recover the overpayment of erroneous overpayments made to an officer or employee. Payroll deductions made pursuant to this section shall be limited to 25 percent of disposal earnings as defined in subsection (d) of § 34-29. If the officer leaves state service, liability is disputed, or recovery cannot be accomplished, the employer may request the Attorney General to bring an action for restitution pursuant to this section, and the court may award the prevailing party costs and reasonable attorney fees.

E. Notwithstanding the provisions of subsection D, the employer shall waive any repayment that would cause hardship if it is determined that such improper payment occurred through no fault of the recipient officer or employee and such officer or employee had no actual knowledge of the error or could not have been reasonably expected to detect the error.

G. The provisions of this section shall apply to all officers and employees of the Commonwealth, whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.).

INTRODUCED

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**59**     *H.* The provisions of this section shall not apply to good faith disbursements made to beneficiaries of  
**60** the Virginia Retirement System.