

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 330

An Act to amend and reenact §§ 23-7.4:1, 65.2-102, and 65.2-402 of the Code of Virginia, relating to special forest wardens; certain benefits.

[H 2405]

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-7.4:1, 65.2-102, and 65.2-402 of the Code of Virginia are amended and reenacted as follows:

§ 23-7.4:1. Waiver of tuition and required fees for certain students.

A. 1. All sums appropriated by law for the purpose of effecting the provisions of this subsection shall be used for the sole purpose of providing for free tuition and required fees at the state-supported institutions and institutional charges, general or college fees, or any charges by whatever term referred to, board and room rent, and books and supplies at any education or training institution of collegiate or secondary grade in the Commonwealth of Virginia approved in writing by the Director of the Department of Veterans' Affairs for the use and benefit of the children not under sixteen and not over twenty-five years of age either of whose parents was killed in action, is missing in action or a prisoner of war in any armed conflict subsequent to December 6, 1941, while serving in the Army, Navy, Marine Corps, Air Force or Coast Guard of the United States, or was or is or may hereafter become totally and permanently disabled due to service during such periods if such parent (i) was a citizen of Virginia at the time of entering such service; (ii) is and has been, for at least five years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth, a citizen of Virginia; (iii) is deceased, was a citizen of Virginia on the date of his or her death and had been a citizen of Virginia for at least five years immediately prior to his or her death; or (iv) is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a citizen of Virginia for at least five years or is and has been a citizen of Virginia for at least five years immediately prior to the date on which application was submitted by or on behalf of such child for admission to any education or training institution of collegiate or secondary grade in this Commonwealth.

2. Such children, upon recommendation of the Director of the Department of Veterans' Affairs, shall be admitted to state institutions of secondary or higher education, free of tuition and all required fees. Each state-supported institution shall include in its catalogue or equivalent publication a statement describing the benefits provided by this subsection.

3. The amounts that may be or may become due by reason of attendance at any such educational or training institution, not in excess of the amount specified in subdivision 5, shall be payable on vouchers approved by the Director of the Department of Veterans' Affairs.

4. The Director of the Department of Veterans' Affairs shall determine the eligibility of the children who may make application for the benefits provided for in this subsection and shall satisfy himself of the attendance and satisfactory progress of such children at such institution and of the accuracy of the charge or charges submitted on account of the attendance of any such children at any such institution. However, neither the Director nor any employee of the Department of Veterans' Affairs shall receive any compensation for such services.

5. To carry out the provisions of this subsection, there may be expended such funds as shall be appropriated for the purpose in the general appropriation acts. However, the maximum amount to be expended for each such child shall not be more, when combined with any federal allowance which may be made for such tuition, charges, fees, rent, books and supplies, than the actual amount of the benefits provided for in this subsection.

6. For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

B. Any child between the ages of sixteen and twenty-five whose parent or any person whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, firefighter, *including a special forest warden designated pursuant to § 10.1-1135*, member of a rescue squad, sworn law-enforcement officer, special agent of the Department of Alcoholic Beverage Control, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, deputy sheriff, or member of the Virginia National Guard while such member is serving in the Virginia National Guard or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia under the following conditions:

1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical

services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter, *including a special forest warden designated pursuant to § 10.1-1135*, or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education. Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this subsection, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

C. Senior citizens shall be entitled to free tuition and required fees pursuant to the provisions of Chapter 4.5 (§ 23-38.54 et seq.) of Title 23.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution, provided the number of foreign students does not exceed the number of students paying full tuition and required fees to the institution under the provisions of the exchange program for a given three-year period.

§ 65.2-102. Coverage of firefighters and law-enforcement officers in off-duty capacity.

A. Notwithstanding any other provision of law, a claim for workers' compensation benefits shall be deemed to be in the course of employment of any firefighter or law-enforcement officer who, in an off-duty capacity or outside an assigned shift or work location, undertakes any law-enforcement or rescue activity. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

B. For purposes of this section:

"Firefighter" means all (i) salaried firefighters, *including special forest wardens designated pursuant to § 10.1-1135*, emergency medical technicians, lifesaving and rescue squad members, and arson investigators and (ii) volunteer firefighters and lifesaving or rescue squad members, if the governing body of the political subdivision in which the principal office of such volunteer fire company or volunteer lifesaving or rescue squad is located has adopted a resolution acknowledging such volunteer fire company or volunteer lifesaving and rescue squad as employees for purposes of this title.

"Law-enforcement officer" means all (i) members of county, city, town or authority police departments, (ii) sheriffs and deputy sheriffs, (iii) auxiliary or reserve police and auxiliary or reserve deputy sheriffs, if the governing body of the political subdivision in which the principal office of such auxiliary or reserve police and auxiliary or reserve deputy sheriff force is located has adopted a resolution acknowledging such auxiliary or reserve police and auxiliary or reserve deputy sheriffs as employees for purposes of this title, and (iv) members of the State Police Officers' Retirement System.

§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. ~~For purposes of this section, the term "firefighter" shall include persons who are employed by or contract with private employers primarily to perform firefighting services.~~

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Patrol officers, (viii) game wardens who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, and (ix) Capitol Police officers shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter or Department of Emergency Management hazardous materials officer having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary.

For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C of this section shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § 10.1-1135.