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HOUSE BILL NO. 1237

Offered January 17, 2002

A BILL to amend and reenact § 65.2-402 of the Code of Virginia, relating to workers' compensation; occupational disease.

Patron—Jones, J.C.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-402 of the Code of Virginia is amended and reenacted as follows:

§ 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. *Medical evidence contesting the relationship of the employment to the disease process or death, or a showing of risk factors alone, shall not be considered substantial competent medical evidence sufficient to overcome the presumption established by this subsection.*

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, (ix) Capitol Police officers, and (x) special agents of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 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. *Medical evidence contesting the relationship of the employment to the disease process or death, or a showing of risk factors alone, shall not be considered substantial competent medical evidence sufficient to overcome the presumption established by this subsection.*

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 or Department of State Police commercial vehicle enforcement officers or motor carrier safety troopers 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 any harmful substance including 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. *Medical evidence contesting the relationship of the employment to the disease process or death, or a showing of risk factors alone, shall not be considered substantial competent medical evidence sufficient to overcome the presumption established by this subsection.*

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

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59 their representatives and (ii) consisting of such tests and studies as may reasonably be required by such
60 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the
61 election of such claimant, be present at such examination.

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

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

71 H. For purposes of this section, the term "firefighter" shall include special forest wardens designated
72 pursuant to § 10.1-1135, *and any firefighter, paramedic or emergency medical technician employed by*
73 *any public or private employer or authority furnishing fire and rescue services in lieu of county, city or*
74 *town salaried or volunteer firefighting or rescue services.*