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SENATE BILL NO. 284

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 9.1-400 through 9.1-404, 27-40.1:1, and 51.1-815 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 4 of Title 9.1 a section numbered 9.1-407, and to repeal §§ 9.1-405 and 9.1-406 of the Code of Virginia, relating to the Line of Duty Act.

Patron—Wampler

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-400 through 9.1-404, 27-40.1:1, and 51.1-815 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 4 of Title 9.1 a section numbered 9.1-407 as follows:

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Board of the Virginia Retirement System" means the Board of the Virginia Retirement System or its designee.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any agent, investigator, or inspector vested with the power to arrest pursuant to § 56-334; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in subdivision 6 of § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated, *on or after April 8, 1972*, so as to prevent the further performance of duty where such incapacity is likely to be permanent.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

§ 9.1-401. Continued health insurance coverage for disabled persons, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.

INTRODUCED

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59 A. The surviving spouse and any dependents of a deceased person shall be afforded continued health
60 insurance coverage, the cost of which shall be paid ~~in full out of the general fund of the state treasury~~
61 *out of the Line of Duty Act Fund established under § 9.1-407.*

62 B. If the disabled person's disability (i) occurred while in the line of duty as the direct or proximate
63 result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2,
64 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, the disabled person, his
65 surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of
66 such health insurance coverage shall be paid ~~in full out of the general fund of the state treasury~~ *Line of*
67 *Duty Act Fund.*

68 C. ~~The~~ 1. *Except as provided in subdivision C 2, continued health insurance coverage provided by*
69 *this section shall be the same plan of benefits which the deceased or disabled person was entitled to on*
70 *the last day of his active duty or comparable benefits established as a result of a replacement plan*
71 *provided under the basic health insurance plan established and administered by the Department of*
72 *Human Resource Management for local government employees pursuant to subsection A of § 2.2-1204.*

73 *Disabled persons, surviving spouses, and dependents eligible for health insurance pursuant to this*
74 *section may elect such optional health insurance benefits as offered under the plan administered by the*
75 *Department of Human Resource Management pursuant to subsection A of § 2.2-1204. However, the*
76 *additional cost to the Department of any optional benefit elected shall be paid for by such eligible*
77 *persons, the payment thereof being a condition for the provision of health insurance under this section.*

78 2. *If elected pursuant to subdivision B 1 of § 9.1-404, continued health insurance coverage provided*
79 *by this section shall be the same plan of benefits that the deceased or disabled person was entitled to*
80 *on the last day of his active duty or comparable benefits established as a result of a replacement plan.*
81 *However, the payment or reimbursement of the related premiums pursuant to subdivision B 2 of*
82 *§ 9.1-404 for such plan of benefits shall be limited to the amount that would have been paid in the*
83 *respective year to the Department of Human Resource Management from funds in the Line of Duty Act*
84 *Fund established under § 9.1-407 for coverage of such persons under the basic plan of health insurance*
85 *established and administered by the Department pursuant to subsection A of § 2.2-1204.*

86 D. For any spouse, continued health insurance provided by this section shall terminate upon such
87 spouse's death or coverage by alternate health insurance *other than the health insurance described in*
88 *subsection C.*

89 E. For dependents, continued health insurance provided by this section shall terminate upon such
90 dependent's death, marriage, coverage by alternate health insurance *other than the health insurance*
91 *described in subsection C,* or twenty-first birthday. Continued health care insurance shall be provided
92 beyond the dependent's twenty-first birthday if the dependent is a full-time college student and shall
93 continue until such time as the dependent ceases to be a full-time student or reaches his twenty-fifth
94 birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the
95 dependent's twenty-first birthday if the dependent is mentally or physically disabled, and such coverage
96 shall continue until three months following the cessation of the disability.

97 F. For any disabled person, continued health insurance provided by this section shall automatically
98 terminate upon the disabled person's death, recovery or return to full duty in any position listed in the
99 definition of deceased person in § 9.1-400.

100 § 9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc.,
101 and retirees.

102 A. The beneficiary of a deceased person whose death occurred while in the line of duty as the direct
103 or proximate result of the performance of his duty shall be entitled to receive the sum of \$75,000, which
104 shall be payable out of the ~~general fund of the state treasury~~ *Line of Duty Act Fund established under*
105 *§ 9.1-407, in gratitude for and in recognition of his sacrifice on behalf of the people of the*
106 *Commonwealth.*

107 B. Subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813, or § 65.2-402, if the deceased person's
108 death (i) arose out of and in the course of his employment or (ii) was within five years from his date of
109 retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be payable out of
110 the ~~general fund of the state treasury~~ *Line of Duty Act Fund.*

111 § 9.1-403. Claim for payment; costs.

112 Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall
113 present his claim to the chief officer, or his designee, of the appropriate division or department that last
114 employed the deceased or disabled person on forms to be provided by the ~~State Comptroller's office~~
115 *Board of the Virginia Retirement System.* The chief officer or his designee shall submit a request to the
116 Superintendent of the Department of the State Police, who shall investigate and report upon the
117 circumstances surrounding the deceased or disabled person, calling upon the additional information and
118 services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his
119 designee, shall report his findings to the ~~Comptroller~~ *Board of the Virginia Retirement System* within
120 ~~ten~~ 10 business days after completion of the investigation. The Department of State Police shall take

action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of investigations conducted pursuant to this section from the appropriate employer that last employed the deceased or disabled employee.

§ 9.1-404. Decisions of the Virginia Retirement System.

A. If it appears to the ~~Comptroller Board of the Virginia Retirement System~~ that the requirements of either subsection A or B of § 9.1-402 have been satisfied, ~~he shall issue his warrant in the the Board shall make payment in the appropriate amount for payment out of the general fund of the state treasury~~ Line of Duty Act Fund established under § 9.1-407 to the surviving spouse or to such persons and subject to such conditions as may be proper in ~~his~~ its administrative discretion, and in the event there is no beneficiary, the ~~Comptroller Board~~ shall issue the payment to the estate of the deceased person. The ~~Comptroller Board~~ shall issue a written decision to the claimant, and payment, if appropriate, shall be made no later than ~~forty-five~~ 45 days following receipt of the report required under § 9.1-403.

B. 1. If it appears to the ~~Comptroller Board of the Virginia Retirement System~~ that the requirements of either subsection A or B of § 9.1-401 have been satisfied, ~~he shall issue his warrants in the the Board shall make payment in the appropriate amounts for payment from the general fund of the state treasury~~ out of the Line of Duty Act Fund established under § 9.1-407 to ensure continued health care coverage for the persons designated under § 9.1-401. The ~~Comptroller Board~~ shall issue a written decision, and ~~payments, if appropriate, shall commence no later than forty-five~~ to the claimant, either approving or disapproving of the claim, within 30 days following receipt of the report required under § 9.1-403.

If the Board approves the claim for continued health insurance coverage, an irrevocable election shall be made by the claimant for continued health insurance coverage under either (i) the basic health insurance plan established and administered by the Department of Human Resource Management for local government employees pursuant to subsection A of § 2.2-1204; or (ii) the same plan of benefits that the deceased or disabled person was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan. Such election shall be made within 30 days of the postmark date on the notice of approval of the claim mailed by the Board to the claimant. The election shall be made on forms prescribed by the Board. If an election is not received from the claimant on the proper forms within such time period, continued health insurance coverage shall be provided under the basic health insurance plan described in subdivision C 1 of § 9.1-401.

For approved claims relating to disabled persons whose disability occurred prior to July 1, 2000, such persons and their surviving spouse or dependents shall not be permitted to make such election but shall be provided the coverage under the basic health insurance plan described in subdivision C 1 of § 9.1-401. In all other cases, the claimant shall be allowed to make such irrevocable election.

The 2. If the claimant elects health insurance coverage under the same plan of benefits that the deceased or disabled person was entitled to on the last day of his active duty, the payments for premiums described under subdivision C 2 of § 9.1-401 shall be retroactive to the first date that the disability existed. The Virginia Retirement System shall fix the annual date or dates for the payment such premiums.

3. If a claimant is approved by the Board and is to be provided continued health insurance coverage under the basic health insurance plan established and administered by the Department of Human Resource Management for local government employees pursuant to subsection A of § 2.2-1204, the Board shall make such payments as are required to the Department so that such coverage is effective no later than 60 days following receipt of the report required under § 9.1-403. In no case, however, shall such approved claimants receive or be entitled to any retroactive benefits under this chapter.

§ 9.1-407. Line of Duty Act Fund established.

A. The Virginia Retirement System shall establish the Line of Duty Act Fund (the "Fund"). In addition to such other powers as shall be vested in the Board of the Virginia Retirement System, the Board shall have the full power to invest, reinvest, and manage the assets of the Fund. The Board shall maintain a separate accounting for the assets of the Fund. Except as provided in this section, assets of the Fund shall be used for the sole purpose of providing for the benefits under this chapter.

B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

C. The costs of providing continued health insurance coverage and death benefit payments under this chapter shall be paid from funds in the Fund. The Commonwealth and each political subdivision with employees eligible for such benefits under this chapter shall make annual contributions to the Fund in order that the moneys in the Fund shall be sufficient to pay for the benefits payable under this chapter. The total annual employer contribution for each employer, expressed as a percentage of the annual membership payroll, shall be determined by the Board in a manner so as to remain relatively level from

182 year to year. The contribution rates for each employer shall be determined after each valuation of the
183 Fund and shall be computed in accordance with recognized actuarial principles on the basis of methods
184 and assumptions approved by the Board. The Board shall determine such rates based on (i) a single
185 risk pool for all employers with employees eligible for benefits under this chapter; (ii) the number of
186 such employees employed the Commonwealth and by each political subdivision; and (iii) such other
187 factors as the Board may deem appropriate.

188 The Board shall advance such funds as may be needed for the initial capitalization of the Fund from
189 fund balances of the Group Insurance Program established under Chapter 5 (§ 51.1-500 et seq.) of Title
190 51.1. Such amounts shall be repaid by the Board as soon as practicable to the Group Insurance
191 Program from the annual employer contributions required herein.

192 D. No officer, director, or member of the Board or of any advisory committee of the Retirement
193 System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in
194 subsection B shall be held personally liable for losses suffered by the Retirement System on investments
195 made under the authority of this section.

196 E. The provisions of §§ 51.1-124.32, 51.1-124.33, and 51.1-124.34 shall apply to the Board's
197 activities with respect to funds in the Fund.

198 F. The Board may assess a reasonable administrative fee to be charged to the Fund for its services
199 in administering the Fund.

200 § 27-40.1:1. Performance of physical examinations required by § 27-40.1.

201 Any county, city or town providing death, retirement, sickness or other benefits pursuant to the
202 authority granted by § 27-39, or pursuant to any other provision of law or the charter of any city or
203 town, or otherwise, shall do so exclusive of, and without regard to, any such benefits paid or payable
204 out of the ~~general fund of the state treasury~~ Line of Duty Act Fund pursuant to Chapter 4 (§ 9.1-400 et
205 seq.) of Title 9.1 and shall by ordinance make provision for the employment of physicians and the
206 performance of the physical examination required by § 27-40.1 and shall cause such examination to be
207 made within ~~ninety~~90 days after June 1, 1973, of every fire fighter in its service or the service of a
208 political subdivision with which it has contracted for fire protection and of every fire fighter entering
209 upon such service thereafter at the time of such entry, provided however, that any fire fighter employed
210 by any such county, city or town which failed to cause such physical examination to be made on or
211 before January 1, 1976, for any fire fighter employed prior to January 1, 1976, in its service or the
212 service of a political subdivision with which it has contracted for fire protection shall be presumed to
213 have been found free from respiratory disease, hypertension or heart disease as if such fire fighter had
214 been examined pursuant to § 27-40.1. Such presumption shall also apply to the benefit of any fire
215 fighter entering upon such service on or after January 1, 1976, unless said county, city or town shall
216 cause such examination to be made of such fire fighter within ~~ninety~~90 days after July 1, 1976. Every
217 fire fighter entering upon such service on or after October 1, 1976, and thereafter, shall be entitled to
218 the benefit of such presumption unless such county, city or town shall cause such examination to be
219 made of such fire fighter at the time of such entry.

220 § 51.1-815. Counties, cities, and towns authorized to provide relief to surviving spouse and children.

221 Any county, city, or town may provide for the relief of any children and surviving spouse of any
222 law-enforcement officer, sheriff, or deputy sheriff who dies while in the service of the county, city, or
223 town. If any policeman loses his life while in the discharge of official duties, there shall be paid to the
224 surviving spouse until death, or remarriage, a pension of not less than one-half of the policeman's salary
225 at the time of death. The relief provided shall be exclusive of any payment out of the ~~general fund of~~
226 ~~the state treasury~~ Line of Duty Act Fund pursuant to Chapter 4 (§ 9.1-400 et seq.) of Title 9.1.

227 2. That §§ 9.1-405 and 9.1-406 of the Code of Virginia are repealed effective July 1, 2004.

228 3. That disabled persons as defined in § 9.1-400 of the Code of Virginia, whose related disability
229 occurred prior to July 1, 2000, and their surviving spouses and dependents shall be eligible for
230 continued health insurance coverage pursuant to the provisions of this act, provided that the claim
231 required under § 9.1-403 is filed on or after July 1, 2004, and is approved by the Board of the
232 Virginia Retirement System.

233 4. That any disabled or deceased person, as defined in § 9.1-400 of the Code of Virginia, or their
234 surviving spouse or dependents who are being provided continued health insurance coverage under
235 Chapter 4 (§ 9.1-400 et seq.) of Title 9.1 as of June 30, 2004, shall make the election required
236 under subdivision B 1 of § 9.1-404 by October 1, 2004. If the election is to receive continued health
237 insurance coverage under the same plan of benefits under which the deceased or disabled person
238 was entitled to on the last day of his active duty or comparable benefits established as a result of a
239 replacement plan, then such persons shall be subject to the limits on premium payments and
240 reimbursements provided under subdivision C 2 of § 9.1-401 of the Code of Virginia.