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SENATE BILL NO. 284

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 12, 2004)

(Patron Prior to Substitute—Senators Wampler and Potts [SB 28])

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.

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.

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

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

66 C. ~~The~~ 1. Except as provided in subdivision C 2, continued health insurance coverage provided by
67 this section shall be the same plan of benefits which the deceased or disabled person was entitled to on
68 the last day of his active duty or comparable benefits established as a result of a replacement plan
69 provided under the basic health insurance plan, or comparable plan, established and administered by
70 the Department of Human Resource Management for state employees.

71 Disabled persons, surviving spouses, and dependents eligible for health insurance pursuant to this
72 section may elect such optional health insurance benefits as offered under the plan administered by the
73 Department of Human Resource Management for state employees, or comparable plan. However, the
74 additional cost to the Department of any optional benefit elected shall be paid for by such eligible
75 persons, the payment thereof being a condition for the provision of health insurance under this section.

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

84 3. Any local government may elect not to participate in the health insurance coverage provided by
85 this section if it notifies the Virginia Retirement System that it provides health insurance coverage to its
86 members, disabled persons as defined in § 9.1-400 who were employees of the local government whose
87 mental or physical incapacitation was the direct or proximate result of their performance in the line of
88 duty as an employee of the local government, and dependents and survivors of such disabled persons or
89 deceased persons that is at least comparable to that provided under subdivision C 1 and at a similar
90 cost to such persons as the cost of health insurance coverage described under subdivision C 1.

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

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

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

105 § 9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc.,
106 and retirees.

107 A. The beneficiary of a deceased person whose death occurred while in the line of duty as the direct
108 or proximate result of the performance of his duty shall be ~~entitled~~ *eligible* to receive the sum of
109 \$75,000, which shall be payable out of the ~~general fund of the state treasury~~ *Line of Duty Act Fund*
110 *established under § 9.1-407*, in gratitude for and in recognition of his sacrifice on behalf of the people
111 of the Commonwealth. *Such amount shall be paid by the Board of the Virginia Retirement System in the*
112 *following order of precedence:*

113 *First, to the spouse of the deceased person;*

114 *Second, if no surviving spouse, to the children of the deceased person and descendants of the*
115 *deceased children, per stirpes;*

116 *Third, if none of the above, to the parents of the deceased person;*

117 *Fourth, if none of the above, to the duly appointed executor or administrator of the estate of the*
118 *deceased person;*

119 *Fifth, if none of the above, to other next of kin of the deceased person entitled under the laws of the*
120 *domicile of the deceased person at the time of his death.*

121 *The Board is authorized to adopt procedures allowing the deceased person to designate a person to*

receive such amount in the event of his death while in the line of duty. If such procedures are adopted and a designation has been made, such \$75,000 shall be paid by the Board to the person designated to receive such amount at the time of the deceased person's death, and the order of precedence established herein shall not be applicable.

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

§ 9.1-403. Claim for payment; costs.

Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the appropriate division or department that last employed the deceased or disabled person on forms to be provided by the State Comptroller's office Board of the Virginia Retirement System. The chief officer or his designee shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased or disabled person, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his designee, shall report his findings to the Comptroller Board of the Virginia Retirement System within 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 to the surviving spouse or to such persons and Line of Duty Act Fund established under § 9.1-407 subject to such conditions as may be proper in his its administrative discretion; and in the event there is no beneficiary, the Comptroller 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 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, or comparable plan, established and administered by the Department of Human Resource Management for state employees; 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 and filed with the Board within 40 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 40-day period, continued health insurance coverage shall be provided under the basic health insurance plan, or comparable 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 spouses and dependents shall not be permitted to make such election but shall be provided the coverage under the basic health insurance plan, or comparable plan, described in subdivision C 1 of § 9.1-401.

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 payment or reimbursement of the related premiums shall be limited to the amount that would have been paid in the respective year to the Department of Human Resource Management from funds in the Line of Duty Act Fund for coverage of such persons under the basic plan of health insurance for state employees, or a comparable plan, established and administered by the Department. The payments 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 of such premiums, and such payments relating to disabled persons disabled in the line of duty on or

183 after July 1, 2000, shall be retroactive to the first date that the disability existed.

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

190 C. Notwithstanding the provisions of subsection A or B of this section, the Board may reimburse the
191 employer for any employer paid health insurance provided under the Line of Duty Act, not to exceed the
192 cost of the insurance provided under a plan described in subdivision C 1 of § 9.1-401.

193 § 9.1-407. Line of Duty Act Fund established.

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

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

204 C. The costs of providing continued health insurance coverage and death benefit payments under this
205 chapter shall be paid from funds in the Fund. The Commonwealth and each political subdivision with
206 employees eligible for such benefits under this chapter shall make annual contributions to the Fund in
207 order that the moneys in the Fund shall be sufficient to pay for the benefits payable under this chapter.
208 The total annual employer contribution for each employer, expressed as a percentage of the annual
209 payroll of the employer, shall be determined by the Board in a manner so as to remain relatively level
210 from year to year. The contribution rates for each employer shall be determined after each valuation of
211 the Fund and shall be computed in accordance with recognized actuarial principles on the basis of
212 methods and assumptions approved by the Board. The Board shall determine such rates based on (i) a
213 single risk pool for all employers with employees eligible for benefits under this chapter; (ii) the number
214 of such employees employed by the Commonwealth and by each political subdivision; and (iii) such
215 other factors as the Board may deem appropriate.

216 The liability for continued health insurance coverage and any death benefit payment relating to a
217 disabled or deceased person that was a member of any fire company or department or rescue squad at
218 the time of such disability or death shall be assigned to or incurred by the county, city, or town that
219 passed the ordinance recognizing such fire company or department or rescue squad as an integral part
220 of the official safety program of such county, city, or town. The Board shall make determinations for
221 assigning or allocating liability for continued health insurance coverage and death benefit payments,
222 and all determinations of the Board shall be final.

223 The Board shall advance such funds as may be needed for the initial capitalization of the Fund from
224 fund balances of the Group Insurance Program established under Chapter 5 (§ 51.1-500 et seq.) of Title
225 51.1. Such amounts shall be repaid by the Board as soon as practicable to the Group Insurance
226 Program from the annual employer contributions required herein.

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

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

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

235 § 27-40.1:1. Performance of physical examinations required by § 27-40.1.

236 Any county, city or town providing death, retirement, sickness or other benefits pursuant to the
237 authority granted by § 27-39, or pursuant to any other provision of law or the charter of any city or
238 town, or otherwise, shall do so exclusive of, and without regard to, any such benefits paid or payable
239 out of the ~~general fund of the state treasury~~ Line of Duty Act Fund pursuant to Chapter 4 (§ 9.1-400 et
240 seq.) of Title 9.1 and shall by ordinance make provision for the employment of physicians and the
241 performance of the physical examination required by § 27-40.1 and shall cause such examination to be
242 made within ~~ninety~~90 days after June 1, 1973, of every fire fighter in its service or the service of a
243 political subdivision with which it has contracted for fire protection and of every fire fighter entering
244 upon such service thereafter at the time of such entry, provided however, that any fire fighter employed

by any such county, city or town which failed to cause such physical examination to be made on or before January 1, 1976, for any fire fighter employed prior to January 1, 1976, in its service or the service of a political subdivision with which it has contracted for fire protection shall be presumed to have been found free from respiratory disease, hypertension or heart disease as if such fire fighter had been examined pursuant to § 27-40.1. Such presumption shall also apply to the benefit of any fire fighter entering upon such service on or after January 1, 1976, unless said county, city or town shall cause such examination to be made of such fire fighter within ~~ninety~~90 days after July 1, 1976. Every fire fighter entering upon such service on or after October 1, 1976, and thereafter, shall be entitled to the benefit of such presumption unless such county, city or town shall cause such examination to be made of such fire fighter at the time of such entry.

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

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

2. That §§ 9.1-405 and 9.1-406 of the Code of Virginia are repealed effective January 1, 2005.

3. That disabled persons as defined in § 9.1-400 of the Code of Virginia, whose related disability occurred prior to July 1, 2000, and their surviving spouses and dependents shall be eligible for continued health insurance coverage pursuant to the provisions of this act, provided that the claim required under § 9.1-403 is filed on or after January 1, 2005, and is approved by the Board of the Virginia Retirement System. Such continued health insurance coverage shall be provided on a prospective basis subsequent to the Board's approval and without reimbursement for health insurance premiums or retroactive payments back to the first date that the disability existed.

4. That disabled persons, as defined in § 9.1-400 of the Code of Virginia, and the surviving spouses and dependents of disabled or deceased persons who are being provided continued health insurance coverage under Chapter 4 (§ 9.1-400 et seq.) of Title 9.1 as of December 31, 2004, shall make the election required under subdivision B 1 of § 9.1-404 by April 1, 2005. If the election is to receive continued health insurance coverage under the same plan of benefits under which 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, then such persons shall be subject to the limits on premium payments and reimbursements provided under subdivision C 2 of § 9.1-404 of the Code of Virginia.

5. That the provisions of this act shall be effective January 1, 2005.