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SENATE BILL NO. 878

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2005)

(Patron Prior to Substitute—Senator Wampler)

A BILL to amend and reenact §§ 27-39, 27-40.1:1, and 51.1-815 of the Code of Virginia; to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 15, containing articles numbered 1 and 2, consisting of sections numbered 51.1-1500 through 51.1-1509; and to repeal Chapter 4 (§§ 9.1-400 through 9.1-406) of Title 9.1 of the Code of Virginia; relating to the Line of Duty Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-39, 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 Title 51.1 a chapter numbered 15, containing articles numbered 1 and 2, consisting of sections numbered 51.1-1500 through 51.1-1509, as follows:

§ 27-39. Counties, cities and towns authorized to provide relief.

Any county, city or town which operates fire-fighting equipment may provide for the relief of (1) any children and surviving spouse of any fire fighter who dies (2) and on or before July 1, 1977, shall provide for the relief of any fire fighter who is disabled by injury or illness as the direct or proximate result of the performance of his duty, including the presumption under § 27-40.1, in the service of the county, city or town or any political subdivision with which it contracts or has contracted for fire protection, whether such fire fighter be a member of a fire company of the county in which the injury occurred or of a political subdivision with which it contracts for fire protection. Such total disability retirement benefits shall be not less than those provided under the in-line-of-duty disability retirement provisions of § 51.1-157. Such relief of any children and surviving spouse of any fire fighter who dies shall be exclusive of, and not dependent upon, any payment under the Line of Duty Act (§ 9.1-400 § 51.1-1500 et seq.).

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

Any county, city or town providing death, retirement, sickness or other benefits pursuant to the authority granted by § 27-39, or pursuant to any other provision of law or the charter of any city or town, or otherwise, shall do so exclusive of, and without regard to, any such benefits paid or payable out of the general fund of the state treasury pursuant to § 9.1-400 et seq. pursuant to the Line of Duty Act (§ 51.1-1500 et seq.) and shall by ordinance make provision for the employment of physicians and the performance of the physical examination required by § 27-40.1 and shall cause such examination to be made within ~~ninety~~ 90 days after June 1, 1973, of every fire fighter in its service or the service of a political subdivision with which it has contracted for fire protection and of every fire fighter entering 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 pursuant to § 9.1-400 et seq. pursuant to the Line of Duty Act (§ 51.1-1500 et seq.).

CHAPTER 15.**LINE OF DUTY ACT.****ARTICLE 1.**

Line of Duty Act Benefits for Employees of the Commonwealth.

§ 51.1-1500. *Title of chapter; definitions.*

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

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

61 "Basic health insurance plan" means the basic health insurance plan established and administered by
62 the Department for state employees, or a health insurance plan providing comparable health insurance
63 coverage in regard to benefits and cost, as established and administered by the Department for purposes
64 of this chapter.

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

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

68 "Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct
69 or proximate result of the performance of his duty, including the presumption under § 51.1-813, as a
70 law-enforcement officer of the Commonwealth; a police chaplain who is an employee of the
71 Commonwealth; a correctional officer as defined in § 53.1-1; a member of the Virginia National Guard
72 or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the
73 Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States
74 Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special game
75 warden who receives compensation from the Commonwealth appointed pursuant to the provisions of
76 § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any
77 member or employee of the Virginia Marine Resources Commission granted the power of arrest
78 pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any
79 other employee of the Department of Emergency Management who is performing official duties of the
80 agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that
81 has been or is later declared to exist under the authority of the Governor in accordance with
82 § 44-146.28; or any conservation officer of the Department of Conservation and Recreation
83 commissioned pursuant to § 10.1-115. This definition shall not apply for purposes of Article 2
84 (§ 51.1-1507 et seq.) of this chapter.

85 "Department" means the Department of Human Resource Management.

86 "Disabled person" means any individual who, as the direct or proximate result of the performance of
87 his duty in any position listed in the definition of deceased person in this section, has become mentally
88 or physically incapacitated, on or after April 8, 1972, so as to prevent the further performance of duty
89 where such incapacity is likely to be permanent. This definition shall not apply for purposes of Article 2
90 (§ 51.1-1507 et seq.) of this chapter.

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

93 § 51.1-1501. Continued health insurance coverage for disabled persons, their spouses and
94 dependents, and for the surviving spouse and dependents of certain deceased public safety officers of the
95 Commonwealth.

96 A. The surviving spouse and any dependents of a deceased person shall be afforded continued health
97 insurance coverage, the cost of which shall be paid out of the Line of Duty Act Fund established under
98 § 51.1-1506.

99 B. If the disabled person's disability (i) occurred while in the line of duty as the direct or proximate
100 result of the performance of his duty or (ii) was subject to the provisions of § 27-40.1, 27-40.2,
101 51.1-813, or 65.2-402, and arose out of and in the course of his employment, the disabled person, his
102 surviving spouse, and any dependents shall be afforded continued health insurance coverage. The cost of
103 such health insurance coverage shall be paid out of the Line of Duty Act Fund.

104 C. Continued health insurance coverage shall not be provided under this section unless a claim has
105 been approved by the Board as provided under § 51.1-1504.

106 D. Continued health insurance coverage provided by this section shall be the basic health insurance
107 plan. Disabled persons, surviving spouses, and dependents eligible for health insurance pursuant to this
108 section may elect such optional health insurance benefits as offered under the basic health insurance
109 plan. However, the additional cost to the Department of any optional benefit elected shall be paid for by
110 such eligible persons, the payment thereof being a condition for the provision of health insurance under
111 this section.

112 E. For any spouse, continued health insurance provided by this section shall terminate upon such
113 spouse's death or coverage by alternate health insurance.

114 F. For dependents, continued health insurance provided by this section shall terminate upon such
115 dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday. Continued
116 health care insurance shall be provided beyond the dependent's twenty-first birthday if the dependent is
117 a full-time college student and shall continue until such time as the dependent ceases to be a full-time
118 student or reaches his twenty-fifth birthday, whichever occurs first. Continued health care insurance
119 shall also be provided beyond the dependent's twenty-first birthday if the dependent is mentally or
120 physically disabled, and such coverage shall continue until three months following the cessation of the
121 disability.

G. For any disabled person, continued health insurance provided by this section shall automatically terminate upon the disabled person's death, recovery, or return to full duty in any position listed in the definition of deceased person in § 51.1-1500.

§ 51.1-1502. Payments to beneficiaries of certain deceased public safety officers of the Commonwealth.

A. The beneficiary of a deceased person whose death occurred while in the line of duty as the direct or proximate result of the performance of his duty shall be eligible to receive the sum of \$75,000, which shall be payable out of the Line of Duty Act Fund established under § 51.1-1506, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

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 after his date of retirement, his beneficiary shall be eligible to receive the sum of \$25,000, which shall be payable out of the Line of Duty Act Fund.

C. Payments to beneficiaries by the Board shall be made in the following order of precedence:

First, to the spouse of the deceased person;

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

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

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

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

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, any amount to be paid under subsection A or B 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 under this subsection shall not be applicable.

§ 51.1-1503. 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 Board. The chief officer or his designee shall submit a request to the Superintendent of the Department of 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 Board within 30 calendar days after receipt of the request. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department of State Police 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.

§ 51.1-1504. Decisions of the Virginia Retirement System.

A. 1. If it appears to the Board that the requirements of either subsection A or B of § 51.1-1501 have been satisfied, the Board shall make payment in the appropriate amount out of the Line of Duty Act Fund established under § 51.1-1506 to ensure continued health care coverage for the persons designated under § 51.1-1501. The Board shall issue a written decision to the claimant, either approving or disapproving of the claim, within 30 days following receipt of the report required under § 51.1-1503. If a claimant is approved by the Board for continued health insurance coverage under this chapter, the Board shall make such payments as are required to the Department so that coverage is effective no later than 60 days following receipt of the report required under § 51.1-1503. For approved claims for continued health insurance relating to persons who (i) were disabled while in the line of duty on or after July 1, 2000; or (ii) died while in the line of duty, the payments shall be retroactive to the first date that the disability existed or the date of death in the line of duty, as applicable.

2. Disabled persons, whose related disability occurred on or after April 8, 1972, but before July 1, 2000, and their surviving spouses and dependents shall be eligible for continued health insurance coverage provided that a claim has been filed as provided under § 51.1-1503 and the claim has been approved by the Board. In such case, 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.

B. If it appears to the Board that the requirements of either subsection A or B of § 51.1-1502 have been satisfied, the Board shall make payment in the appropriate amount out of the Line of Duty Act Fund subject to such conditions as may be proper in its administrative discretion. The Board shall issue a written decision to the claimant, either approving or disapproving of the claim, within 30 days

183 following receipt of the report required under § 51.1-1503.

184 C. Notwithstanding the provisions of subsection A, the Board may reimburse the employer for any
185 employer paid health insurance provided under the Line of Duty Act, not to exceed the cost of the
186 insurance provided under the basic health insurance plan.

187 § 51.1-1505. Appeal from decision of the Board.

188 Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person
189 aggrieved by a decision of the Board pursuant to § 51.1-1504 may appeal such decision to the
190 appropriate personnel of the Virginia Retirement System in accordance with the provisions of the
191 Administrative Process Act (§ 2.2-4000 et seq.).

192 § 51.1-1506. Line of Duty Act Fund established.

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

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

203 C. The costs of providing continued health insurance coverage and lump-sum death benefit payments
204 under this chapter shall be paid from funds in the Fund. The Commonwealth shall make contributions
205 each year to the Fund in accordance with guidelines adopted by the Board. The guidelines shall ensure
206 that moneys in the Fund are sufficient to pay for the benefits under this chapter.

207 The costs of providing continued health insurance coverage shall be funded on a current
208 disbursement basis. The costs for paying lump-sum death benefit payments shall be funded on an
209 actuarial equivalent basis.

210 D. The Board shall advance funds as may be needed for the initial capitalization of the Fund from
211 fund balances of the Group Insurance Program established under Chapter 5 (§ 51.1-500 et seq.) of Title
212 51.1. Such amounts shall be repaid by the Board as soon as practicable to the Group Insurance
213 Program from the annual contributions required under this chapter.

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

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

220 G. The Board may assess a reasonable administrative fee to be charged to the Fund for its services
221 in administering the Fund.

222 ARTICLE 2.

223 Line of Duty Act Benefits for Employees of Political Subdivisions.

224 § 51.1-1507. Definitions.

225 A. As used in this article, unless the context requires a different meaning:

226 "Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct
227 or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1,
228 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of any political subdivision of the
229 Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or
230 city sergeant or deputy city sergeant of the City of Richmond; a local police chaplain; a member of any
231 fire company or department or rescue squad that has been recognized by an ordinance or a resolution
232 of the governing body of any county, city, or town of the Commonwealth as an integral part of the
233 official safety program of such county, city, or town; any regular or special game warden who receives
234 compensation from a county, city, or town; any employee of any county, city, or town performing
235 official emergency management or emergency services duties in cooperation with the Department of
236 Emergency Management, when those duties are related to a major disaster or emergency, as defined in
237 § 44-146.16, that has been or is later declared to exist under the authority of the Governor in
238 accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local
239 governing body; or any nonfirefighter regional hazardous materials emergency response team member.

240 "Disabled person" means any individual who, as the direct or proximate result of the performance of
241 his duty in any position listed in the definition of deceased person in this section, has become mentally
242 or physically incapacitated, on or after July 1, 2000, so as to prevent the further performance of duty
243 where such incapacity is likely to be permanent. At the option of the political subdivision, the term
244 "disabled person" may include disabled persons who were disabled on or after April 8, 1972.

"Political subdivision" means any (i) county, city, or town; or (ii) political entity, subdivision, branch, commission, public authority, or body corporate of a local government.

§ 51.1-1508. Participation by political subdivisions in Line of Duty Act benefits.

Except as provided in § 51.1-1509, all political subdivisions with employees included in the definition of a deceased person under § 51.1-1507 shall participate in providing continued health insurance coverage and lump-sum death benefit payments under the same terms and conditions as provided in Article 1 (§ 51.1-1500 et seq.) of this chapter. However, providing continued health insurance coverage for disabled persons who were disabled on or after April 8, 1972, but before July 1, 2000, and their surviving spouses and dependents, shall not be mandatory, but shall be at the option of the political subdivision. Continued health insurance coverage shall be provided under the basic health insurance plan.

Each political subdivision providing line of duty benefits pursuant to this subsection shall make contributions each year to the Line of Duty Act Fund established under § 51.1-1506 in accordance with guidelines adopted by the Board. The total annual employer contribution for each political subdivision, expressed as a percentage of the annual payroll of the employer, shall be determined by the Board in accordance with § 51.1-1506. The contribution rates for each employer shall be determined after each valuation of the Fund and shall be computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board. The Board shall determine such rates based on (i) a single risk pool for all employers, including the Commonwealth, (but with the exception of those employers described in § 51.1-1509), with employees eligible for benefits under this chapter, (ii) the number of such employees employed by the Commonwealth and by each political subdivision, and (iii) such other factors as the Board may deem appropriate. Employees of local school divisions shall not be included for purposes of computing the annual employer contribution unless the local school division has employees included in the definition of a deceased person under § 51.1-1507.

§ 51.1-1509. Nonparticipating political subdivisions.

A. A political subdivision with employees included in the definition of a deceased person under § 51.1-1507 may make an irrevocable election to be fully responsible for self-funding the continued health insurance coverage and lump-sum death benefit payments described under this chapter for its employees from its own funds. The election shall be made by November 1 of any year with an effective date of July 1 of the following calendar year.

A political subdivision making this election shall not be required to contribute to the Line of Duty Act Fund. In addition, the political subdivision shall have the option of providing continued health insurance coverage for disabled persons who were disabled on or after April 8, 1972, but before July 1, 2000, and their surviving spouses and dependents.

Each political subdivision that elects to be fully responsible for funding the Line of Duty Act benefits under this chapter for its employees shall provide continued health insurance coverage that is comparable to the health insurance coverage provided generally to all employees of the political subdivision. The lump-sum death benefit payments paid by the political subdivision shall be at least equal to those set forth in subsections A and B of § 51.1-1502. All other terms and conditions of Article 1 (§ 51.1-1500 et seq.) of this chapter shall apply to such political subdivisions mutatis mutandis.

B. Notwithstanding the provisions of § 51.1-1504, each political subdivision that has made an election as provided in subsection A with employees included in the definition of a deceased person under § 51.1-1507 shall make the determination described under § 51.1-1504 as to whether or not a claimant who has made a claim pursuant to § 51.1-1503 is eligible for continued health insurance coverage or lump-sum death benefit payments. In addition, political subdivisions described in subsection A shall provide written notice to the Board of their determination as soon as practical in order that the Board can make any required payments from the Line of Duty Act Fund within the time frames set forth in § 51.1-1504.

Determinations of political subdivisions as described under this subsection may be appealed to the appropriate personnel of the political subdivision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the Virginia Retirement System shall develop and make available all forms for the elections described under the provisions of this act by September 15, 2005.

3. That the provisions of this act shall become effective January 1, 2006, except that (i) the Virginia Retirement System is authorized, beginning July 1, 2005, to begin implementation of the provisions of this act that are applicable to the Retirement System, and (ii) a political subdivision as defined under this act may elect by November 1, 2005, with an effective date of July 1, 2006, to be fully responsible for self-funding the Line of Duty Act benefits for its employees.

4. That Chapter 4 (§§ 9.1-400 through 9.1-406) of Title 9.1 is repealed effective January 1, 2006.