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HOUSE BILL NO. 532

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 44-146.17 and 65.2-402.1 of the Code of Virginia, relating to powers of the Governor in time of disaster; infectious disease presumption.

Patrons—Mathieson, Albo, Alexander, Amundson, Armstrong, BaCote, Bouchard, Brink, Bulova, Caputo, Dance, Ebbin, Eisenberg, Englin, Howell, A.T., Iaquinto, Johnson, Lewis, Marsden, McClellan, Miller, P.J., Moran, Morrissey, Nichols, Phillips, Plum, Rust, Scott, J.M., Shannon, Shuler, Toscano, Tyler, Valentine, Vanderhye, Ward and Watts; Senators: Barker, Edwards, Herring, Lucas, Saslaw and Whipple

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That §§ 44-146.17 and 65.2-402.1 of the Code of Virginia are amended and reenacted as follows:**

§ 44-146.17. Powers and duties of Governor.

A. The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of natural or man-made disasters.

B. The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1). To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2). To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3). To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4). To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

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55 (5). On behalf of the Commonwealth enter into mutual aid arrangements with other states and to
56 coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of
57 emergency is declared in another state and the Governor receives a written request for assistance from
58 the executive authority of that state, the Governor may authorize the use in the other state of personnel,
59 equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent
60 of the chief executive officer or governing body of the political subdivision;

61 (6). To delegate any administrative authority vested in him under this chapter, and to provide for the
62 further delegation of any such authority, as needed;

63 (7). Whenever, in the opinion of the Governor, the safety and welfare of the people of the
64 Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he
65 may declare a state of emergency to exist;

66 (8). To request a major disaster declaration from the President, thereby certifying the need for federal
67 disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth,
68 its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting
69 from the disaster;

70 (9). To provide incident command system guidelines for state agencies and local emergency response
71 organizations; and

72 (10). Whenever, in the opinion of the Governor or his designee, an employee of a state or local
73 public safety agency responding to a man-made or natural disaster has suffered an extreme personal or
74 family hardship in the affected area, such as the destruction of a personal residence or the existence of
75 living conditions that imperil the health and safety of an immediate family member of the employee, the
76 Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per
77 month, for up to three calendar months, to the employee to assist the employee with the hardship; and

78 *11. To declare, whenever the Board of Health has issued an order pursuant to § 32.1-13 for the*
79 *purpose of suppressing the outbreak of a communicable, contagious or infectious disease, and the*
80 *Governor has declared a state of emergency due to an outbreak of such disease that poses a danger to*
81 *the life and health of the public in the Commonwealth or any locality therein, that the disease, or any*
82 *condition that leads to the disease, is a disease or condition for which the presumption as to death or*
83 *disability from infectious disease established pursuant to § 65.2-402.1 shall apply.*

84 § 65.2-402.1. Presumption as to death or disability from infectious disease.

85 A. Hepatitis, meningococcal meningitis, tuberculosis ~~or~~, HIV, or any disease, or any condition that
86 leads to disease, that has been declared by the Governor under subdivision 11 of § 44-146.17 to be a
87 disease or condition for which the presumption as to death or disability from infectious disease
88 established pursuant to this section applies, causing the death of, or any health condition or impairment
89 resulting in total or partial disability of any (i) salaried or volunteer firefighter, paramedic or emergency
90 medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county,
91 city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency
92 Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of
93 Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time
94 sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol
95 Police officer, (x) special agent of the Department of Alcoholic Beverage Control appointed under the
96 provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, or (xi) conservation officer of the Department of
97 Conservation and Recreation commissioned pursuant to § 10.1-115, who has a documented occupational
98 exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of
99 government duty, that are covered by this title unless such presumption is overcome by a preponderance
100 of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring
101 on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave
102 notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure
103 occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person
104 gave notice, written or otherwise, of the occupational exposure to his employer.

105 B. As used in this section:

106 "Blood or body fluids" means blood and body fluids containing visible blood and other body fluids
107 to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as
108 established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis,
109 meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory,
110 salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which
111 infectious airborne or blood-borne organisms can be transmitted between persons.

112 "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other
113 strain of hepatitis generally recognized by the medical community.

114 "HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or
115 type II, causing immunodeficiency syndrome.

116 "Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV,

means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A of this section shall only apply if persons entitled to invoke them have, if requested by the 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 appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A of this section shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

F. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing 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.

G. Notwithstanding any provision of this section to the contrary, the presumption created by this section for any disease, or any condition that leads to disease, as a result of a declaration by the Governor under subdivision 11 of § 44-146.17 shall exist only with respect to a documented occupational exposure to blood or body fluids that occurs during the period of the declared state of emergency or the three months following the end of the period of the state of emergency.