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SENATE BILL NO. 500

Senate Amendments in [] — January 31, 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 Prior to Engrossment—Senators Northam, Barker, Edwards, Herring, Saslaw and Whipple;
Delegates: Albo, Alexander, Amundson, Brink, Caputo, Ebbin, Eisenberg, Marsden, Mathieson, McClellan,
Moran, Plum, Scott, J.M., Valentine, Vanderhye and Watts

Referred to Committee on General Laws and Technology

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;

(5). On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of

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emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

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

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

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

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

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

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

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

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

B. As used in this section:

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

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

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

"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

122 risk of infection.

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

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

138 E. The presumptions described in subsection A of this section shall only apply if persons entitled to
139 invoke them have, if requested by the appointing authority or governing body employing them,
140 undergone preemployment physical examinations that (i) were conducted prior to the making of any
141 claims under this title that rely on such presumptions, (ii) were performed by physicians whose
142 qualifications are as prescribed by the appointing authority or governing body employing such persons,
143 (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or
144 governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal
145 meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in
146 subsection A of this section shall not be effective until six months following such examinations, unless
147 such persons entitled to invoke such presumption can demonstrate a documented exposure during the
148 six-month period.

149 F. Persons making claims under this title who rely on such presumption shall, upon the request of
150 appointing authorities or governing bodies employing such persons, submit to physical examinations (i)
151 conducted by physicians selected by such appointing authorities or governing bodies or their
152 representatives and (ii) consisting of such tests and studies as may reasonably be required by such
153 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the
154 election of such claimant, be present at such examination.

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

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