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HOUSE BILL NO. 1958

Offered January 14, 2009

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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, Bouchard, Hugo and Shannon

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 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, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of 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

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59 of the chief executive officer or governing body of the political subdivision;

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

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

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

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

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

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

83 § 65.2-402.1. Presumption as to death or disability from infectious disease.

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

103 B. As used in this section:

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

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

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

114 "Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV,
115 means an exposure that occurs during the performance of job duties that places a covered employee at
116 risk of infection.

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

121 prophylactic or otherwise.

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

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

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

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