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10102830D

SENATE BILL NO. 279
Offered January 13, 2010
Prefiled January 12, 2010

A BILL to amend and reenact §§ 9.1-401, 9.1-402, 9.1-404, 9.1-405, 56-484.12, and 58.1-1730 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 9.1-400.1, relating to Line of Duty Death and Health Benefits Trust Fund.

Patrons—Quayle and McWaters

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-401, 9.1-402, 9.1-404, 9.1-405, 56-484.12, and 58.1-1730 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 9.1-400.1 as follows:

§ 9.1-400.1. Line of Duty Death and Health Benefits Trust Fund established; administration.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Line of Duty Death and Health Benefits Trust Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Deposits to the Fund shall be made pursuant to surcharges collected pursuant to § 56-484.12 and § 58.1-1730 and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Deposits are irrevocable and are not subject to the claims of creditors. Moneys in the Fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the participants and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses. The Fund is established to pay (i) the death and health insurance premium benefits prescribed by the Line of Duty Act (§ 9.1-400 et seq.) and (ii) the death benefits prescribed by subsection B of § 44-93.1. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Accounts.

The Department of Accounts shall use the assistance of the Virginia Retirement System in establishing, investing, and maintaining the Fund and in performing actuarial services. The Board of Trustees of the Virginia Retirement System shall administer and manage the investment of the Fund as custodian and provide staff support. The Virginia Retirement System shall invest the Funds in accordance with Article 3.1 (§ 51.1-124.30 et seq.) of Chapter 1 of Title 51.1, and no officer, director, or member of the board or of any advisory committee of the Virginia Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in Article 3.1 of Chapter 1 of Title 51.1 shall be held personally liable for losses suffered by the Fund on investments made under the authority of this chapter. The Fund shall annually reimburse the Department of Accounts and the Virginia Retirement System for all reasonable costs incurred and associated, directly and indirectly, with the administration of this chapter and management and investment of the Fund.

B. Benefits paid under the Line of Duty Act shall be funded by an $0.18 surcharge imposed on the end user of each access line for which the $0.75 E-911 fee is currently charged pursuant to §§ 56-484.12 and 58.1-1730.

C. For any surviving spouse of a deceased person or any disabled person who is receiving the benefits described in § 9.1-401, and who would otherwise qualify for health insurance credit described in Chapter 14 (§ 51.1-1400 et seq.) of Title 51.1, the amount of such credit shall be calculated and reimbursed to the State Comptroller for deposit into the Trust Fund from the Health Insurance Credit Trust Fund, in a manner prescribed by the Board of Trustees of the Virginia Retirement System.

D. Payments required pursuant to subsection B of § 44-93.1 for the surviving spouses and dependents of certain members of the National Guard and United States military reserves killed in action in any armed conflict on or after October 7, 2001, are payable from the Fund. The Department of Accounts, with support from the Department of Military Affairs, shall determine eligibility for this benefit.

§ 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~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury.

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

C. The continued health insurance coverage provided by this section shall be the same plan of benefits 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.

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

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

F. 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 § 9.1-400.

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

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of $75,000, which shall be payable out of the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of $100,000, which shall be payable out of the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. 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 to receive the sum of $25,000, which shall be payable out of the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury.

§ 9.1-404. Order of Comptroller.

A. If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-402 have been satisfied, he shall issue his warrant in the appropriate amount for payment out of the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his 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 shall issue a decision, and payment, if appropriate, shall be made no later than forty-five days following receipt of the report required under § 9.1-403.

B. If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-401 have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury to ensure continued health care coverage for the persons designated under § 9.1-401. The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty-five days following receipt of the report required under § 9.1-403. The payments shall be retroactive to the first date that the disability existed.

§ 9.1-405. Appeal from decision of Comptroller.

Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides.

The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct

the Comptroller to issue his warrant in the appropriate amount for the payment out of the ~~general fund~~ *Line of Duty Death and Health Benefits Trust Fund* of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § 9.1-402 to the estate of the deceased person.

§ 56-484.12. Definitions.

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

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"VoIP service" means interconnected voice over Internet protocol service as defined in the Code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of $0.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia; provided, however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17 is not required to be billed. *An additional surcharge of $0.18 shall be billed, collected and remitted in the same manner as the $0.75 fee, as specified in § 56-484.17, except that such funds collected shall be deposited directly to the Line of Duty Death and Health Benefits Trust Fund established pursuant to § 9.1-400.1.*

§ 58.1-1730. Tax for enhanced 911 service; definitions.

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

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network

Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of $0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C. *An additional surcharge of $0.18 shall be billed, collected and remitted in the same manner as the $0.75 fee, except that such funds collected shall be deposited directly to the Line of Duty Death and Health Benefits Trust Fund established pursuant to § 9.1-400.1.*

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § 58.1-647.

D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.

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