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SENATE BILL NO. 125

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 9.1-400, 9.1-403, 9.1-404, and 9.1-405 of the Code of Virginia, relating to the Line of Duty Act.

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-400, 9.1-403, 9.1-404, and 9.1-405 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-400. Title of chapter; definitions.

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

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

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

"Covered employee" means any employee, sheriff, deputy sheriff, or volunteer of a participating or nonparticipating employer eligible for coverage under this chapter.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

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

"Nonparticipating employer" means any political subdivision that makes an irrevocable election prior to July 1, 2012, in such a manner and on such forms as prescribed by the Board of Trustees of the Virginia Retirement System to self-fund benefits under this chapter.

"Participating employer" means (i) any agency of the Commonwealth with covered employees or (ii) any political subdivision with covered employees that does not make an irrevocable election prior to July 1, 2012, in such a manner and on such forms as prescribed by the Board of Trustees of the

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Virginia Retirement System to self-fund benefits under this chapter.

§ 9.1-403. Claim for payment; costs.

A. 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 State Comptroller's office.

B. In the case of a police department or a sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof *that is a participating employer*, the chief officer, or his designee, of such department or office shall investigate and report upon the circumstances surrounding the deceased or disabled person and report his findings to the Comptroller within 10 business days after completion of the investigation. The Comptroller, the Attorney General, or any such chief officer *of a participating employer*, in his discretion, may submit a request to the Superintendent of the Department of State Police to perform the investigation pursuant to subsection C.

C. In all other cases *involving a participating employer*, upon receipt of the claim the chief officer, or his designee, of the appropriate division or department shall submit a request to the Superintendent of the Department of the 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 Comptroller within 10 business days after completion of the investigation. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of investigations conducted pursuant to this section from the appropriate *participating* employer that last employed the deceased or disabled employee.

D. *In all cases involving nonparticipating employers, the employer or employer's agent shall promptly investigate the circumstances surrounding the deceased or disabled person and determine, as applicable, whether the requirements of either (i) subsection A or B of § 9.1-401 or (ii) subsection A or B of § 9.1-402 have been satisfied. The employer or employer's agent shall then provide written notice to the person filing the claim as to whether or not the claim is approved and whether payment is proper. If the employer or employer's agent determines that the requirements of subsection A or B of § 9.1-401 have been satisfied and that payment is proper, it shall promptly issue payments in the proper amounts to ensure continued health care coverage for the persons designated under § 9.1-401. Payments made pursuant to § 9.1-401 shall be retroactive to the first date that the disability existed. If the employer or employer's agent determines that the requirements of subsection A or B of § 9.1-402 have been satisfied and that payment is proper, it shall promptly issue payment.*

E. Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the disabled person shall provide him with information about the continued health insurance coverage provided under this act and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

§ 9.1-404. Order of Comptroller.

A. ~~If~~ *In all cases involving a participating employer, 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 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~~ *45* days following receipt of the report required under § 9.1-403.

B. ~~If~~ *In all cases involving a participating employer, 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 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~~ *45* 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 or nonparticipating employer.

A. Any beneficiary, disabled person or his spouse, ~~or~~ dependent of a deceased or disabled person, *or participating employer* 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.

B. Any beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person aggrieved by the decision of a nonparticipating employer 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. In all cases involving the decision of a nonparticipating employer, such employer shall be made a party to the litigation.

C. ~~The~~ *In actions brought under this section, 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~~, *and if the case involves a participating employer, the* order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. *If such case involves a nonparticipating employer, the order shall direct the nonparticipating employer to make payment in the appropriate amount 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.

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