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SENATE BILL NO. 704

Offered January 9, 2013

Prefiled November 26, 2012

A BILL to amend and reenact §§ 65.2-402 and 65.2-402.1 of the Code of Virginia, relating to workers' compensation; presumption of compensability for certain diseases; correctional officers.

Patron—Puckett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-402 and 65.2-402.1 of the Code of Virginia are amended and reenacted as follows:
§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force established and maintained by the Virginia Port Authority, and (xiv) campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education, and (xv) *correctional officers as defined in § 53.1-1* shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed ~~twelve~~ 12 years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke them have, if requested by the private employer, 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 private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to

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59 physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or
60 their representatives and (ii) consisting of such tests and studies as may reasonably be required by such
61 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the
62 election of such claimant, be present at such examination.

63 F. Whenever a claim for death benefits is made under this title and the presumptions of this section
64 are invoked, any person entitled to make such claim shall, upon the request of the appropriate private
65 employer, appointing authority or governing body that had employed the deceased, submit the body of
66 the deceased to a postmortem examination as may be directed by the Commission. A qualified
67 physician, selected and compensated by the person entitled to make the claim, may, at the election of
68 such claimant, be present at such postmortem examination.

69 G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary
70 and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this
71 section.

72 H. For purposes of this section, the term "firefighter" shall include special forest wardens designated
73 pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers
74 primarily to perform firefighting services.

75 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

76 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health
77 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,
78 paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement
79 System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v)
80 Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city
81 sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer
82 who is a full-time sworn member of the enforcement division of the Department of Game and Inland
83 Fisheries, (ix) Capitol Police officer, (x) special agent of the Department of Alcoholic Beverage Control
84 appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the
85 Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter
86 as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan
87 Washington Airports Authority, (xii) officer of the police force established and maintained by the
88 Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation
89 commissioned pursuant to § 10.1-115, (xiv) sworn officer of the police force established and maintained
90 by the Virginia Port Authority, ~~or~~ (xv) any campus police officer appointed under Chapter 17 (§ 23-232
91 et seq.) of Title 23 and employed by any public institution of higher education, *or (xvi) correctional*
92 *officer as defined in § 53.1-1*, who has a documented occupational exposure to blood or body fluids
93 shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered
94 by this title unless such presumption is overcome by a preponderance of competent evidence to the
95 contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall
96 be deemed "documented" if the person covered under this section gave notice, written or otherwise, of
97 the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002,
98 shall be deemed "documented" without regard to whether the person gave notice, written or otherwise,
99 of the occupational exposure to his employer.

100 B. As used in this section:

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

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

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

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

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

119 D. Whenever any standard, medically-recognized vaccine or other form of immunization or
120 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 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 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.