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HOUSE BILL NO. 438

Offered January 8, 2020

Prefiled January 3, 2020

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 65.2 a section numbered 65.2-107, relating to workers' compensation; compensability of post-traumatic stress disorder incurred by a law-enforcement officer or firefighter.

Patrons—Heretick, Helmer, Askew, Avoli, Ayala, Bagby, Bourne, Brewer, Carr, Carroll Foy, Collins, Davis, Delaney, Edmunds, Gooditis, Guy, Guzman, Hope, Hurst, Jenkins, Keam, Kilgore, Knight, Kory, Krizek, Leftwich, Levine, Mugler, Murphy, Plum, Price, Samirah, Subramanyam, Ward, Watts and Willett; Senators: Marsden, Morrissey and Peake

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 65.2 a section numbered 65.2-107 as follows:

§ 65.2-107. Post-traumatic stress disorder incurred by law-enforcement officers and firefighters.

A. As used in this section:

"Firefighter" means all (i) salaried firefighters, including special forest wardens designated pursuant to § 10.1-1135, emergency medical services personnel, and arson investigators and (ii) volunteer firefighters and volunteer emergency medical services personnel, if the governing body of the political subdivision in which the principal office of such volunteer fire company or volunteer emergency medical services agency is located has adopted a resolution acknowledging such volunteer firefighters or volunteer emergency medical services personnel as employees for purposes of this title.

"In the line of duty" means any action that a law-enforcement officer or firefighter was obligated or authorized to perform by rule, regulation, written condition of employment service, or law.

"Law-enforcement officer" means all (i) members of county, city, town, or authority police departments; (ii) sheriffs and deputy sheriffs; (iii) auxiliary or reserve police and auxiliary or reserve deputy sheriffs, if the governing body of the political subdivision in which the principal office of such auxiliary or reserve police and auxiliary or reserve deputy sheriff force is located has adopted a resolution acknowledging such auxiliary or reserve police and auxiliary or reserve deputy sheriffs as employees for purposes of this title; (iv) members of the State Police Officers' Retirement System; and (v) members of the Capitol Police as described in § 30-34.2:1.

"Mental health professional" means a board-certified psychiatrist or a psychologist licensed pursuant to Title 54.1 who has experience diagnosing and treating post-traumatic stress disorder.

"Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder as specified in the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

"Qualifying event" means an event occurring in the line of duty on or after July 1, 2020, in which a law-enforcement officer or firefighter:

- 1. Views a deceased minor;*
- 2. Witnesses the death of a person or an incident involving the death of a person;*
- 3. Witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;*
- 4. Has physical contact with and treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;*
- 5. Transports an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or*
- 6. Witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim.*

B. Post-traumatic stress disorder incurred by a law-enforcement officer or firefighter is compensable under this title if:

1. A mental health professional examines a law-enforcement officer or firefighter and diagnoses the law-enforcement officer or firefighter as suffering from post-traumatic stress disorder as a result of the individual's undergoing a qualifying event;

2. The post-traumatic stress disorder resulted from the law-enforcement officer or firefighter acting in the line of duty and, in the case of a firefighter, such firefighter complied with federal Occupational Safety and Health Act standards adopted pursuant to 29 C.F.R. 1910.134 and 29 C.F.R. 1910.156;

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HB438

56 3. The law-enforcement officer's or firefighter's undergoing a qualifying event was a substantial
57 factor in causing his post-traumatic stress disorder;

58 4. Such qualifying event, and not another event or source of stress, was the primary cause of the
59 post-traumatic stress disorder; and

60 5. The post-traumatic stress disorder did not result from any disciplinary action, work evaluation, job
61 transfer, layoff, demotion, promotion, termination, retirement, or similar action of the officer or
62 firefighter.

63 Any such mental health professional shall comply with any workers' compensation guidelines for
64 approved medical providers, including guidelines on release of past or contemporaneous medical
65 records.

66 C. Whenever liability to pay compensation under this section is contested by the employer, the
67 employer shall file with the Commission, on or before the thirtieth day after the employer has received a
68 written notice of claim, a notice in accordance with a form prescribed by the chairman of the
69 Commission stating that the right to compensation is contested, the name of the claimant, the name of
70 the employer, the date of the alleged injury, and the specific grounds on which the right to
71 compensation is contested. The employer shall send a copy of the notice to the employee. If the
72 employer or the employer's attorney fails to file the notice contesting liability on or before the thirtieth
73 day after receiving the written notice of claim, the employer shall commence payment of compensation
74 for such injury on or before the thirtieth day after receiving the written notice of claim, but the
75 employer may contest the employee's right to receive compensation on any grounds or the extent of the
76 employee's disability within 180 days from the receipt of the written notice of claim and any benefits
77 paid during the 180 days shall be considered payments without prejudice, provided the employer shall
78 not be required to commence payment of compensation when the written notice of claim has not been
79 properly served or when the written notice of claim fails to include a warning that the employer (i) if
80 the employer has commenced payment for the alleged injury on or before the thirtieth day after
81 receiving a written notice of claim, shall be precluded from contesting liability unless a notice
82 contesting liability is filed within 180 days from the receipt of the written notice of claim and (ii) shall
83 be conclusively presumed to have accepted the compensability of the alleged injury unless the employer
84 either files a notice contesting liability on or before the thirtieth day after receiving a written notice of
85 claim or commences payment for the alleged injury on or before such thirtieth day. An employer shall
86 be entitled, if the employer prevails, to reimbursement from the claimant of any compensation paid by
87 the employer on and after the date the Commission receives written notice from the employer or the
88 employer's legal representative, in accordance with the form prescribed by the chairman of the
89 Commission, stating that the right to compensation is contested. Notwithstanding the provisions of this
90 subsection, an employer who fails to contest liability for an alleged injury on or before the thirtieth day
91 after receiving a written notice of claim and who fails to commence payment for the alleged injury on
92 or before such thirtieth day, shall be conclusively presumed to have accepted the compensability of the
93 alleged injury. If an employer has opted to post an address of where notice of a claim for compensation
94 by an employee shall be sent, the 30-day period set forth in this subsection shall begin on the date when
95 such employer receives written notice of a claim for compensation at such posted address.

96 D. Notwithstanding any provision of this title, workers' compensation benefits for any
97 law-enforcement officer or firefighter payable pursuant to this section shall (i) include any combination
98 of medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist, temporary
99 total incapacity benefits under § 65.2-500 and temporary partial incapacity benefits under § 65.2-502
100 and (ii) be provided for a maximum of 52 weeks from the date of diagnosis. No medical treatment,
101 temporary total incapacity benefits under § 65.2-500 or temporary partial incapacity benefits under
102 § 65.2-502 shall be awarded beyond four years from the date of the qualifying event that formed the
103 basis for the claim for benefits under this section. The weekly benefits received by a law-enforcement
104 officer or a firefighter pursuant to § 65.2-500 or 65.2-502, when combined with other benefits including
105 contributory and noncontributory retirement benefits, Social Security benefits, benefits under a long-term
106 or short-term disability plan, but not including payments for medical care, shall not exceed the average
107 weekly wage paid to such law-enforcement officer or firefighter.

108 E. No employer of a law-enforcement officer or fire marshal with police powers as set forth in
109 §§ 27-34.2 and 27-34.2:1 shall discharge, discipline, discriminate against, or otherwise penalize a
110 law-enforcement officer or fire marshal solely for seeking or receiving mental health care services or
111 surrendering his firearm, ammunition, or electronic defense weapon used in the performance of the
112 official duties to the employer during the time he receives mental health care services. The provisions of
113 this subsection shall not be applicable to a law-enforcement officer or fire marshal who (i) seeks or
114 receives mental health care services to avoid disciplinary action by his employer or (ii) refuses to
115 submit himself to an examination as provided in this section. Prior to returning to a surrendered
116 firearm, ammunition, or electronic defense weapon used in the performance of the official duties, the
117 employer shall request the law-enforcement officer or fire marshal to submit to an examination by a

118 *mental health professional. The examination shall be performed to determine whether the*
119 *law-enforcement officer or fire marshal is ready to report for official duty and shall be paid for by the*
120 *employer.*

121 *F. No later than September 1, 2020, the Department of Criminal Justice Services and the Department*
122 *of Fire Programs shall develop a model critical incident and peer support policy to support the mental*
123 *health care and wellness of law-enforcement officers and firefighters.*

124 *G. No later than January 1, 2021, each employer of law-enforcement officers or firefighters shall (i)*
125 *adopt and maintain a written policy that meets or exceeds the standards of the model critical incident*
126 *and peer support policy developed pursuant to subsection F, (ii) make peer support available to such*
127 *law-enforcement officers and firefighters, and (iii) refer a law-enforcement officer or firefighter seeking*
128 *mental health care services to a mental health professional.*

129 *H. Each police basic training program conducted or administered by the Department of State Police*
130 *or a municipal police department in the Commonwealth shall provide, in consultation with the*
131 *Department of Behavioral Health and Developmental Services, resilience and self-care technique*
132 *training for any individual who begins basic training as a law-enforcement officer, on or after July 1,*
133 *2020.*

134 *I. In consultation with the Department of Behavioral Health and Developmental Services, the*
135 *Department of Fire Programs and any other state or municipal entity providing training to a firefighter*
136 *shall provide resilience and self-care technique training for any individual who begins initial training as*
137 *a firefighter on or after July 1, 2020.*