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HOUSE BILL NO. 438

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 30, 2020)

(Patron Prior to Substitute—Delegate Heretick)

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.

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 any (i) salaried firefighter, including special forest wardens designated pursuant to § 10.1-1135, emergency medical services personnel, and local and state fire scene investigators and (ii) volunteer firefighter and volunteer emergency medical services personnel.

"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 any (i) member of the State Police Officers' Retirement System; (ii) member of a county, city, or town police department; (iii) sheriff or deputy sheriff; (iv) Department of Emergency Management hazardous materials officer; (v) city sergeant or deputy city sergeant of the City of Richmond; (vi) Virginia Marine Police officer; (vii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (viii) Capitol Police officer; (ix) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (x) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority; (xi) officer of the police force established and maintained by the Norfolk Airport Authority; (xii) sworn officer of the police force established and maintained by the Virginia Port Authority; or (xiii) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education,

"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 incident or exposure occurring in the line of duty on or after July 1, 2020:

1. Resulting in serious bodily injury or death to any person or persons;
2. Involving a minor who has been injured, killed, abused, or exploited;
3. Involving an immediate threat to life of the claimant or another individual;
4. Involving mass casualties; or
5. Responding to crime scenes for investigation.

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;

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

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

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

Any such mental health professional shall comply with any workers' compensation guidelines for

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60 approved medical providers, including guidelines on release of past or contemporaneous medical
61 records.

62 C. Notwithstanding any provision of this title, workers' compensation benefits for any
63 law-enforcement officer or firefighter payable pursuant to this section shall (i) include any combination
64 of medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist, temporary
65 total incapacity benefits under § 65.2-500 and temporary partial incapacity benefits under § 65.2-502
66 and (ii) be provided for a maximum of 52 weeks from the date of diagnosis. No medical treatment,
67 temporary total incapacity benefits under § 65.2-500 or temporary partial incapacity benefits under
68 § 65.2-502 shall be awarded beyond four years from the date of the qualifying event that formed the
69 basis for the claim for benefits under this section. The weekly benefits received by a law-enforcement
70 officer or a firefighter pursuant to § 65.2-500 or 65.2-502, when combined with other benefits, including
71 contributory and noncontributory retirement benefits, Social Security benefits, benefits under a long-term
72 or short-term disability plan, but not including payments for medical care, shall not exceed the average
73 weekly wage paid to such law-enforcement officer or firefighter.

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

79 E. Each police basic training program conducted or administered by the Department of State Police
80 or a municipal police department in the Commonwealth shall provide, in consultation with the
81 Department of Behavioral Health and Developmental Services, resilience and self-care technique
82 training for any individual who begins basic training as a law-enforcement officer on or after July 1,
83 2021.

84 F. Each fire basic training program conducted or administered by the Department of Fire Programs
85 or a municipal fire department in the Commonwealth shall provide, in consultation with the Department
86 of Behavioral Health and Developmental Services, resilience and self-care technique training for any
87 individual who begins basic training as a firefighter on or after July 1, 2021.