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## SENATE BILL NO. 265

Offered January 8, 2020

Prefiled January 3, 2020

*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.*

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 Referred to Committee on Commerce and Labor
 

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**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 Virginia Alcoholic Beverage Control Authority 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 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education, (xv) *correctional officers as defined in § 53.1-1, and (xvi) full-time sworn members of the enforcement division of the Department of Motor Vehicles* 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 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

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

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

70 G. Volunteer emergency medical services personnel, volunteer law-enforcement chaplains, auxiliary  
71 and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this  
72 section.

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

76 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

77 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health  
78 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,  
79 or salaried or volunteer emergency medical services personnel, (ii) member of the State Police Officers'  
80 Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy  
81 sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or  
82 deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation  
83 police officer who is a full-time sworn member of the enforcement division of the Department of Game  
84 and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the Virginia Alcoholic Beverage  
85 Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for  
86 such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the  
87 provisions of this chapter as provided in § 65.2-305, officer of the police force established and  
88 maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force  
89 established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the  
90 Department of Conservation and Recreation commissioned pursuant to § 10.1-115, (xiv) sworn officer of  
91 the police force established and maintained by the Virginia Port Authority, ~~or~~ (xv) ~~any~~ campus police  
92 officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any  
93 public institution of higher education, (xvi) *correctional officer as defined in § 53.1-1, or* (xvii) *full-time*  
94 *sworn member of the enforcement division of the Department of Motor Vehicles*, who has a documented  
95 occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in  
96 the line of government duty, that are covered by this title unless such presumption is overcome by a  
97 preponderance of competent evidence to the contrary. For purposes of this section, an occupational  
98 exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under  
99 this section gave notice, written or otherwise, of the occupational exposure to his employer, and an  
100 occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to  
101 whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

102 B. As used in this section:

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

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

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

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

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

121 D. Whenever any standard, medically-recognized vaccine or other form of immunization or  
122 prophylaxis exists for the prevention of a communicable disease for which a presumption is established  
123 under this section, if medically indicated by the given circumstances pursuant to immunization policies  
124 established by the Advisory Committee on Immunization Practices of the United States Public Health  
125 Service, a person subject to the provisions of this section may be required by such person's employer to  
126 undergo the immunization or prophylaxis unless the person's physician determines in writing that the  
127 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written  
128 declaration, failure or refusal by a person subject to the provisions of this section to undergo such  
129 immunization or prophylaxis shall disqualify the person from any presumption established by this  
130 section.

131 E. The presumptions described in subsection A shall only apply if persons entitled to invoke them  
132 have, if requested by the appointing authority or governing body employing them, undergone  
133 preemployment physical examinations that (i) were conducted prior to the making of any claims under  
134 this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as  
135 prescribed by the appointing authority or governing body employing such persons, (iii) included such  
136 appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may  
137 have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or  
138 HIV at the time of such examinations. The presumptions described in subsection A shall not be effective  
139 until six months following such examinations, unless such persons entitled to invoke such presumption  
140 can demonstrate a documented exposure during the six-month period.

141 F. Persons making claims under this title who rely on such presumption shall, upon the request of  
142 appointing authorities or governing bodies employing such persons, submit to physical examinations (i)  
143 conducted by physicians selected by such appointing authorities or governing bodies or their  
144 representatives and (ii) consisting of such tests and studies as may reasonably be required by such  
145 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the  
146 election of such claimant, be present at such examination.