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SENATE BILL NO. 741

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact § 65.2-402 of the Code of Virginia, relating to workers' compensation; presumption that post-traumatic stress disorder is an occupational disease.

Patron—McPike

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-402 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer, or post-traumatic stress disorder.

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 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. *If any (i) salaried or volunteer firefighter, (ii) member of the State Police Officers' Retirement System, (iii) member of a county, city, or town police department, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x) 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, (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, officer of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officer of the police force established and maintained by*

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the Virginia Port Authority, (xiv) 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, (xv) animal protection police officer or similarly situated employee, or (xvi) 9-1-1 emergency call taker, dispatcher, or similarly situated employee receives a diagnosis of post-traumatic stress disorder (PTSD) from a qualified health care provider, suffers death or any impairment resulting in total or partial disability from work caused by the PTSD, and receives a statement from a qualified health care provider that the PTSD was caused by a single critical event or multiple exposures to critical events that occurred in the course of the employment, then the PTSD 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. Factual findings that the critical event or events in question were expected as part of the claimant's job duties or that training had been provided to the claimant related to the type of critical event shall not prevent the presumption contained in this section from being applied. PTSD that is solely attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer shall not be covered by the presumption contained in this section. For the purpose of this subsection:

"Critical event" includes an event:

1. Resulting in serious injury or death to an individual;

2. Involving a minor who has been injured, killed, abused, exploited, or a victim of a crime;

3. Involving mass casualties;

4. Resulting in injury to or the death of a coworker;

5. Involving an immediate threat to the life of the claimant or another individual; or

6. Involving the abuse, cruelty, injury, exploitation, or death of an animal.

"Qualified health care provider" means a licensed physician, licensed clinical psychologist, licensed professional counselor, or licensed clinical social worker.

E. The presumptions described in subsections A, B, ~~and~~ C, *and D* 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, *or post-traumatic stress disorder* at the time of such examinations.

~~E.~~ *F.* 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 physical examinations (i) conducted by physicians selected by such employers, authorities, 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.

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

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

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