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HOUSE BILL NO. 5028

Offered August 18, 2020

Prefiled August 17, 2020

A BILL to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to workers' compensation; presumption as to death or disability from COVID-19.

Patrons—Jones, Krizek, Murphy, Aird, Bagby, Bourne, Carr, Carroll Foy, Delaney, Filler-Corn, Guzman, Hope, Jenkins, Keam, Kory, Levine, Lindsey, Lopez, Plum, Price, Simonds, Tran, Ward, Watts and Willett

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Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-402.1 of the Code of Virginia is amended and reenacted as follows:

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

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, or salaried or volunteer emergency medical services personnel~~,~~*;* (ii) member of the State Police Officers' Retirement System~~,~~*;* (iii) member of county, city, or town police departments~~,~~*;* (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 Wildlife Resources~~,~~*;* (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) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115~~,~~*;* (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority~~,~~*;* (xv) 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, (xvi) correctional officer as defined in § 53.1-1~~,~~*;* or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this ~~section~~ *subsection*, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this ~~section~~ *subsection* gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. *COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in § 9.1-101; (iii) first responder, as described in § 65.2-104; (iv) health care provider, as defined in 8.01-581.1, or (v) school board employee shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary.*

C. As used in this section:

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

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

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

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

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

~~D.~~ *E.* Whenever any standard, medically-recognized vaccine or other form of immunization or 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.~~ *F. 1.* 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.

2. The presumptions described in subsection B 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 presumption, (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 COVID-19 at the time of such examinations. This subdivision shall only apply to persons hired after January 1, 2021.

~~F.~~ *G.* 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.

2. That the provisions of this act are effective retroactive to January 1, 2020.