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HOUSE BILL NO. 995

Offered January 12, 2022

Prefiled January 12, 2022

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 hypertension; heart disease; COVID-19.

Patron—Kory

Referred to Committee on Commerce and Energy

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 any of the following persons who have completed five years of service in their position as (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 Wildlife Resources, (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, (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 ~~(xv)~~ (xvi) salaried or volunteer emergency medical services personnel, as defined in § 32.1-111.1, when such emergency medical services personnel is operating in a locality that has legally adopted a resolution declaring that it will provide one or more of the presumptions under this subsection, 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, breast, colon, brain, or testicular 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 five years of service 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 colon, brain, or testicular cancer, the presumption shall not apply for any individual who was diagnosed with such a condition before July 1, 2020.

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

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HB995

59 examinations.

60 E. Persons making claims under this title who rely on such presumptions shall, upon the request of
61 private employers, appointing authorities or governing bodies employing such persons, submit to
62 physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or
63 their representatives and (ii) consisting of such tests and studies as may reasonably be required by such
64 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the
65 election of such claimant, be present at such examination.

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

72 G. Volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and
73 reserve police are not included within the coverage of this section.

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

77 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

78 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health
79 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,
80 or salaried or volunteer emergency medical services personnel; (ii) member of the State Police Officers'
81 Retirement System; (iii) member of county, city, or town police departments; (iv) sheriff or deputy
82 sheriff; (v) Department of Emergency Management hazardous materials officer; (vi) city sergeant or
83 deputy city sergeant of the City of Richmond; (vii) Virginia Marine Police officer; (viii) conservation
84 police officer who is a full-time sworn member of the enforcement division of the Department of
85 Wildlife Resources; (ix) Capitol Police officer; (x) special agent of the Virginia Alcoholic Beverage
86 Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (xi) for
87 such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the
88 provisions of this chapter as provided in § 65.2-305, officer of the police force established and
89 maintained by the Metropolitan Washington Airports Authority; (xii) officer of the police force
90 established and maintained by the Norfolk Airport Authority; (xiii) conservation officer of the
91 Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (xiv) sworn officer
92 of the police force established and maintained by the Virginia Port Authority; (xv) campus police officer
93 appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public
94 institution of higher education; (xvi) correctional officer as defined in § 53.1-1; or (xvii) full-time sworn
95 member of the enforcement division of the Department of Motor Vehicles who has a documented
96 occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in
97 the line of government duty, that are covered by this title unless such presumption is overcome by a
98 preponderance of competent evidence to the contrary. For purposes of this subsection, an occupational
99 exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under
100 this subsection gave notice, written or otherwise, of the occupational exposure to his employer, and an
101 occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to
102 whether the person gave notice, written or otherwise, of the occupational exposure to his employer. For
103 any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of
104 the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed
105 with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

106 B. 1. COVID-19 causing the death of, or any health condition or impairment resulting in total or
107 partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's
108 employment is directly involved in diagnosing or treating persons known or suspected to have
109 COVID-19, shall be presumed to be an occupational disease that is covered by this title unless such
110 presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes
111 of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19 and
112 signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

113 2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial
114 disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in
115 § 9.1-101; (iii) correctional officer, as defined in § 53.1-1; (iv) *employee of the Department of Juvenile*
116 *Justice*; (v) *employee of the Department of Corrections*; or ~~(iv)~~ (vi) regional jail officer shall be
117 presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by
118 this title unless such presumption is overcome by a preponderance of competent evidence to the
119 contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive
120 diagnostic test for COVID-19, an incubation period consistent with COVID-19, and signs and symptoms

of COVID-19 that require medical treatment.

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.

"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.

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.

E. 1. 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.

2. The presumptions described in subdivision B 1 shall not apply to any person offered by such person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the U.S. Food and Drug Administration, unless the person is immunized or the person's physician determines in writing that the immunization 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 shall disqualify the person from the presumptions described in subdivision B 1.

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 subdivision B 1 shall apply to any person entitled to invoke them for any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2021, 2022, and;

a. Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19; or

b. On or after July 1, 2020, and prior to December 31, 2021, 2022, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

3. The presumptions described in subdivision B 2 shall apply to any person entitled to invoke them

182 for any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19
183 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to
184 December 31, ~~2021~~ 2022, the claimant received a diagnosis of COVID-19 from a licensed physician,
185 after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with
186 signs and symptoms of COVID-19 that required medical treatment.

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

193 **2. That the provisions of this act shall not apply to any individual who was diagnosed with**
194 **hypertension or heart disease before January 1, 2022.**

195 **3. That the provisions of this act shall not apply to any individual who was diagnosed with**
196 **COVID-19 before January 1, 2022.**