

23101991D

SENATE BILL NO. 1038

Senate Amendments in [] - February 3, 2023

Prefiled January 8, 2023

A *BILL to amend and reenact § 65.2-402 of the Code of Virginia, relating to workers' compensation; presumption for arson and hazardous materials investigators.*

Patrons Prior to Engrossment—Senators McPike and Cosgrove

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.

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, and (xv) 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~~, any of the following persons who have completed five years of service in their position as (i) salaried or volunteer firefighters; (ii) Department of Emergency Management hazardous materials ~~officer~~, officers; (iii) commercial vehicle enforcement ~~officer~~ officers or motor carrier safety ~~trooper~~ troopers employed by the Department of State Police; ~~or~~; (iv) arson investigators or bomb investigators employed by the Department of State Police; (v) full-time sworn ~~member~~ members of the enforcement division of the Department of Motor Vehicles having completed five years of service; or (vi) [~~personnel employed by the Commonwealth or any of its agencies to members of the State Police Officers' Retirement System who~~] collect, analyze, or handle hazardous materials, [~~hazardous chemicals, radiological materials, biological agents, or drugs as defined in § 44-146.34, infectious biological substances and radiological agents, as defined in § 18.2-52.1, fentanyl or fentanyl analogs, or methamphetamine, its salts, isomers, or salts of its isomers~~] 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

ENGROSSED

SB1038E

59 invoke them have, if requested by the private employer, appointing authority or governing body
60 employing them, undergone preemployment physical examinations that (i) were conducted prior to the
61 making of any claims under this title that rely on such presumptions, (ii) were performed by physicians
62 whose qualifications are as prescribed by the private employer, appointing authority or governing body
63 employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the
64 private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such
65 persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such
66 examinations.

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

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

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

81 H. For purposes of this section, "firefighter" includes special forest wardens designated pursuant to
82 § 10.1-1135 and any persons who are employed by or contract with private employers primarily to
83 perform firefighting services.