

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 712

An Act to amend and reenact §§ 2.1-133.6, 2.1-133.8, 2.1-133.9 and 2.1-133.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-133.7:1, relating to death benefits and continued health insurance coverage when public safety employees are killed or become disabled in the line of duty.

[H 324]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-133.6, 2.1-133.8, 2.1-133.9 and 2.1-133.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-133.7:1 as follows:

§ 2.1-133.6. Definitions.

For the purposes of this chapter the following words shall have the following meanings:

"Beneficiary" means the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate.

"Deceased" means any person whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any agent, investigator, or inspector vested with the power to arrest pursuant to § 56-334; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Services hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled employee" means any person who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent.

"Line of duty" means any action the deceased or disabled employee was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

§ 2.1-133.7:1. *Continued health insurance coverage for disabled employees, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.*

A. *If the deceased's death: (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, his surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of such health insurance coverage shall be paid in full out of the general fund of the state treasury.*

B. *If the disabled employee's disability: (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, the disabled employee, his surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of such health insurance coverage shall be paid in full out of the general fund of the state treasury.*

C. *The continued health insurance coverage provided by this section shall be the same plan of benefits which the deceased or disabled employee was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan.*

D. *For any spouse, continued health insurance provided by this section shall terminate upon such*

spouse's death, remarriage or coverage by alternate health insurance.

E. For dependents, continued health insurance provided by this section shall terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday. Continued health care insurance shall be provided beyond the dependent's twenty-first birthday if the dependent is a full-time college student and shall continue until such time as the dependent ceases to be a full-time student or reaches his twenty-fifth birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the dependent's twenty-first birthday if the dependent is mentally or physically disabled, and such coverage shall continue until three months following the cessation of the disability.

F. For any disabled employee, continued health insurance provided by this section shall automatically terminate upon the disabled employee's death, recovery or return to full duty in any position listed in the definition of deceased in § 2.1-133.6.

§ 2.1-133.8. Claim for payment.

Every beneficiary, *disabled employee or his spouse, or dependent of a deceased or disabled employee* hereunder shall present his claim to the chief officer, or his designee, of the appropriate division or department which last employed the deceased *or disabled employee* on forms to be provided by the State Comptroller's office. Such chief officer or his designee shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased *or disabled employee*, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The chief officer, or his designee, shall report his findings to the Comptroller *within forty-five days of receipt of a claim.*

§ 2.1-133.9. Order of Comptroller.

A. If it shall appear appears to the Comptroller that the requirements of this article shall either subsection A or B of § 2.1-133.7 have been satisfied, he shall issue his warrant in the appropriate aggregate amount for payment out of the general fund of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his administrative discretion, and in the event there is no beneficiary, the Comptroller shall issue such payment to the estate of the deceased. The Comptroller shall issue a decision, and payment, if appropriate, shall be made no later than forty-five days following receipt of the report required under § 2.1-133.8.

B. If it appears to the Comptroller that the requirements of either subsection A or B of § 2.1-133.7:1 have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the general fund of the state treasury to ensure continued health care coverage for the persons designated under § 2.1-133.7:1. The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty-five days following receipt of the report required under § 2.1-133.8. Such payments shall be retroactive to the first date that such disability existed.

§ 2.1-133.10. Appeal from decision of Comptroller.

Any beneficiary, *disabled employee or his spouse or dependent of a deceased or disabled employee* aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased is probated or in which the personal representative of the deceased is qualified or might qualify *or in the jurisdiction in which the disabled employee resides.* The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate ~~aggregate~~ amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. If, *in the case of a deceased*, there is no beneficiary, the judge shall direct such payment *as is due under § 2.1-133.7* to the estate of the deceased.

2. That the provisions of this act shall become effective on July 1, 2000.