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## HOUSE BILL NO. 1749

Offered January 14, 2009

Prefiled January 7, 2009

*A BILL to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to workers' compensation; infectious disease presumption for wastewater system employees.*

Patron—Pogge

Referred to Committee on Commerce and Labor

**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, paramedic or emergency medical technician, (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 Game and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, or (xi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, or (xii) employee of a locality or other political subdivision of the Commonwealth who is employed in a sewerage system, sewage treatment works, water treatment plant, wastewater treatment plant, or waste treatment works or system, operated by the employing locality or other political subdivision, and whose regular duties entail exposure to sewage, who has a documented occupational exposure to blood or body fluids or, if the person is described in clause (xii), to sewage, 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, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section 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.

B. 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.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

C. 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. 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

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59 under this section, if medically indicated by the given circumstances pursuant to immunization policies  
60 established by the Advisory Committee on Immunization Practices of the United States Public Health  
61 Service, a person subject to the provisions of this section may be required by such person's employer to  
62 undergo the immunization or prophylaxis unless the person's physician determines in writing that the  
63 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written  
64 declaration, failure or refusal by a person subject to the provisions of this section to undergo such  
65 immunization or prophylaxis shall disqualify the person from any presumption established by this  
66 section.

67 E. The presumptions described in subsection A of this section shall only apply if persons entitled to  
68 invoke them have, if requested by the appointing authority or governing body employing them,  
69 undergone preemployment physical examinations that (i) were conducted prior to the making of any  
70 claims under this title that rely on such presumptions, (ii) were performed by physicians whose  
71 qualifications are as prescribed by the appointing authority or governing body employing such persons,  
72 (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or  
73 governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal  
74 meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in  
75 subsection A of this section shall not be effective until six months following such examinations, unless  
76 such persons entitled to invoke such presumption can demonstrate a documented exposure during the  
77 six-month period.

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