

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to the Virginia Workers'*
 3 *Compensation Act; occupational disease presumption for police officers of the Metropolitan*
 4 *Washington Airports Authority or Norfolk Airport Authority.*

5 [H 1812]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That § 65.2-402.1 of the Code of Virginia is amended and reenacted as follows:**

9 § 65.2-402.1. Presumption as to death or disability from infectious disease.

10 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health
 11 condition or impairment resulting in total or partial disability of any (i) salaried or volunteer firefighter,
 12 paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement
 13 System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v)
 14 Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city
 15 sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer
 16 who is a full-time sworn member of the enforcement division of the Department of Game and Inland
 17 Fisheries, (ix) Capitol Police officer, (x) special agent of the Department of Alcoholic Beverage Control
 18 appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) *for such period that the*
 19 *Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter*
 20 *as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan*
 21 *Washington Airports Authority, (xii) officer of the police force established and maintained by the*
 22 *Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation*
 23 *commissioned pursuant to § 10.1-115, or ~~(xii)~~ (xiv) sworn officer of the police force established and*
 24 *maintained by the Virginia Port Authority, who has a documented occupational exposure to blood or*
 25 *body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that*
 26 *are covered by this title unless such presumption is overcome by a preponderance of competent evidence*
 27 *to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1,*
 28 *2002, shall be deemed "documented" if the person covered under this section gave notice, written or*
 29 *otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to*
 30 *July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written*
 31 *or otherwise, of the occupational exposure to his employer.*

32 B. As used in this section:

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

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

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

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

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

51 D. Whenever any standard, medically-recognized vaccine or other form of immunization or
 52 prophylaxis exists for the prevention of a communicable disease for which a presumption is established
 53 under this section, if medically indicated by the given circumstances pursuant to immunization policies
 54 established by the Advisory Committee on Immunization Practices of the United States Public Health
 55 Service, a person subject to the provisions of this section may be required by such person's employer to
 56 undergo the immunization or prophylaxis unless the person's physician determines in writing that the

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57 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written
58 declaration, failure or refusal by a person subject to the provisions of this section to undergo such
59 immunization or prophylaxis shall disqualify the person from any presumption established by this
60 section.

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

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