

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 647

An Act to amend and reenact §§ 9.1-400, 9.1-401, 9.1-402 through 9.1-405, and 9.1-407 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 9.1-400.1 and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.37, and to repeal § 9.1-406 of the Code of Virginia, relating to benefits for certain public employees disabled in the line of duty and their families, and for the families and beneficiaries of such employees who die in the line of duty.

[H 2204]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-400, 9.1-401, 9.1-402 through 9.1-405, and 9.1-407 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 9.1-400.1 and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.37 as follows:

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

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

"Deceased person" means any individual whose death occurs on or after April 8, 1972, *in the line of duty* 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 the 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 police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia 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 regular or special conservation police officer 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 Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217.

"Disabled person" means any individual who, *becomes mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty* 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, in any position listed in the definition of deceased person 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.~~ The term shall also include "Disabled person" includes any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Employee" means any person who would be covered or whose spouse, dependents, or beneficiaries would be covered under the benefits of this chapter if the person became a disabled person or a deceased person.

"Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a

volunteer who is a member of any fire company or department or rescue squad described in the definition of "deceased person," the county, city, or town that by ordinance or resolution recognized such fire company or department or rescue squad as an integral part of the official safety program of such locality.

"Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to § 9.1-400.1.

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

"Participating employer" means any employer that is a state agency or is a political subdivision of the Commonwealth that did not make an election to become a nonparticipating employer.

"Nonparticipating employer" means any employer that is a political subdivision of the Commonwealth that elected on or before July 1, 2012, to directly fund the cost of benefits provided under this chapter and not participate in the Fund.

"VRS" means the Virginia Retirement System.

§ 9.1-400.1. Line of Duty Death and Health Benefits Trust Fund.

A. There is hereby established a permanent and perpetual fund to be known as the Line of Duty Death and Health Benefits Trust Fund, consisting of such moneys as may be appropriated by the General Assembly or by participating employers, gifts, bequests, endowments or grants from the United States government, its agencies and instrumentalities, all income from the investment of moneys held in the Fund, and any other available sources of funds, public and private. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it. The moneys in the Fund shall be (i) deemed separate and independent trust funds, (ii) segregated and accounted for separately from all other funds of the Commonwealth, and (iii) invested and administered solely in the interests of the persons who are covered under the benefits provided pursuant to this chapter. Deposits to the fund are irrevocable and are not subject to the claims of creditors.

B. The Virginia Retirement System shall administer, manage, and handle investments of the Fund as provided in § 51.1-124.37.

C. The Fund shall be used to provide the benefits under this chapter; to reimburse VRS for all reasonable costs incurred and associated, directly and indirectly, with the administration, management, and investment of the Fund; and to reimburse the Department of Human Resource Management for all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to § 9.1-401 for participating employers.

D. Each participating employer shall make annual contributions to the Fund and provide information as determined by VRS. The amount of contribution for each participating employer shall be determined on a current disbursement basis in accordance with the provisions of this section.

§ 9.1-401. Continued health insurance coverage for disabled persons, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.

A. 1. The surviving spouse and any dependents of a deceased person and any disabled person and his spouse and dependents shall be afforded continued health insurance coverage as provided in this section, the cost of which shall be paid in full out of the general fund of the state treasury by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable. For any disabled person and any surviving spouse or dependent of a deceased person or disabled person who is receiving the benefits described in this section and who would otherwise qualify for the health insurance credit described in Chapter 14 (§ 51.1-1400 et seq.) of Title 51.1, the amount of such credit shall be deposited into the Line of Duty Death and Health Benefits Trust Fund or paid to the nonparticipating employer, as applicable, from the health insurance credit trust fund, in a manner prescribed by the Virginia Retirement System.

B. If the disabled person'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 person, 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 person 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 under this section for a spouse shall terminate upon such spouse's death or coverage by alternate health insurance.

E. For dependents, C. Unless otherwise provided by law, continued health insurance provided by under this section for dependents shall terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday be subject to the same continued eligibility and termination rules applicable to dependents for the plan in which they are enrolled. 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 D. Unless otherwise provided by law, continued health insurance provided under this section for any disabled person; continued health insurance provided by this section shall automatically terminate upon the disabled person's death, recovery or return. Continued health insurance for any disabled person, his spouse, and dependents shall terminate when he returns to full duty in any position listed in the definition of deceased person in § 9.1-400.

E. The Department of Human Resource Management shall administer the provisions of this section, including making determinations of comparability under subsection B, and be reimbursed for all reasonable costs incurred and associated, directly and indirectly, in performing the duties by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable.

§ 9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$75,000, which shall be payable out of the general fund of the state treasury paid by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$100,000, which shall be payable out of the general fund of the state treasury paid by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. Subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813, or § 65.2-402, if the deceased person's death (i) arose out of and in the course of his employment or (ii) was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be payable out of the general fund of the state treasury paid by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable.

§ 9.1-402.1. Payments for burial expenses.

It is the intent of the General Assembly that expeditious payments for burial expenses be made for persons whose death is determined to be a direct and proximate result of their performance in the line of duty as defined by the Line of Duty Act. ~~The State Comptroller is hereby authorized to release Upon the approval of VRS, at the request of the family of a person who may be subject to the line of duty death benefits, payments shall be made to a funeral service provider for burial and transportation costs by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable.~~ These payments would be advanced from the death benefit that would be due to the beneficiary of the deceased person if it is determined that the person qualifies for line of duty coverage. Expenses advanced under this provision shall not exceed the coverage amounts outlined in § 65.2-512. In the event a determination is made that the death is not subject to the line of duty benefits, the Virginia Retirement System VRS or other retirement fund to of which the deceased is a member will deduct from benefit payments otherwise due to be paid to the beneficiaries of the deceased payments previously paid by the State Comptroller for burial and related transportation expenses and return such funds to the State Comptroller nonparticipating employer or to the Fund on behalf of participating employers, as applicable. The State Comptroller Virginia Retirement System shall have the right to file a claim with the Virginia Workers' Compensation Commission against any employer to recover burial and related transportation expenses advanced under this provision.

§ 9.1-403. Claim for payment; costs.

A. Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the appropriate division or department that last employed the deceased or disabled person employer for which the disabled or deceased person last worked, on forms to be provided by the State Comptroller's office VRS. Upon receipt of a claim, the chief officer or his designee shall forward the claim to VRS within seven days. The Virginia Retirement System shall determine eligibility for benefits under this chapter. The Virginia Retirement System may request assistance in obtaining information necessary to make an eligibility determination from the Department of State Police. The Department of State Police shall be reimbursed from the Fund or the nonparticipating employer, as applicable, for the cost of searching for and obtaining information requested by VRS. The Virginia Retirement System shall be reimbursed for the reasonable costs incurred for making eligibility determinations by nonparticipating employers or from the Fund on behalf of participating employers, as applicable.

B. In the case of a police department or a sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, the chief officer, or his designee, of such

department or office shall investigate and report upon the circumstances surrounding the deceased or disabled person and report his findings to the Comptroller within 10 business days after completion of the investigation. The Comptroller, the Attorney General, or any such chief officer, in his discretion, may submit a request to the Superintendent of the Department of State Police to perform the investigation pursuant to subsection C.

C. In all other cases, upon receipt of the claim the chief officer, or his designee, of the appropriate division or department 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 person, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his designee, shall report his findings to the Comptroller within 10 business days after completion of the investigation. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of investigations conducted pursuant to this section from the appropriate employer that last employed the deceased or disabled employee.

D. B. 1. Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the disabled person shall provide him with information about the continued health insurance coverage provided under this act *chapter* and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

2. Within 10 business days of having knowledge that a deceased person's surviving spouse, dependents, or beneficiaries may be entitled to benefits under this chapter, the agency or department for which the deceased person last worked shall provide the surviving spouse, dependents, or beneficiaries, as applicable, with information about the benefits provided under this chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the surviving spouse, dependents, or beneficiaries.

§ 9.1-404. Order of the Virginia Retirement System.

A. The Virginia Retirement System shall make an eligibility determination within 45 days of receiving all necessary information for determining eligibility for a claim filed under § 9.1-403. If it appears to the Comptroller Virginia Retirement System determines that the requirements of either subsection A or B of § 9.1-402 have been satisfied, he shall issue his warrant in the appropriate 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 the payment to the estate of the deceased person. 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 § 9.1-403 *benefits under this chapter are due, it shall notify the nonparticipating employer, which shall provide the benefits within 15 days of such notice, or pay the benefits from the Fund on behalf of the participating employer within 15 days of the determination, as applicable.*

B. If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-401 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 § 9.1-401. 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 § 9.1-403. The payments shall be retroactive to the first date that the disability existed.

§ 9.1-405. Appeal from decision of the Virginia Retirement System.

Any beneficiary, employer, disabled person or his spouse, or dependent of a deceased or disabled person aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides *Virginia Retirement System may appeal the decision through a process established by VRS.*

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 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 person, there is no beneficiary, the judge shall direct such payment as is due under § 9.1-402 to the estate of the deceased person.

§ 9.1-407. Employer to provide training; and maintain certain records.

A. Any law-enforcement or public safety officer entitled to benefits under this Chapter *chapter* shall receive training concerning the benefits available to himself or his beneficiary in case of disability or death in the line of duty. The Secretary of Public Safety and Homeland Security shall develop training information to be distributed to agencies and localities with employees subject to this chapter. The agency or locality shall be responsible for providing the training. Such training shall not count towards

in-service training requirements for law-enforcement officers pursuant to § 9.1-102.

B. Each agency or locality shall require each employee covered under this chapter to provide to the agency or locality the names and addresses of the beneficiaries who would receive the benefit under § 9.1-402 if the employee becomes a deceased person. Such information shall be recertified by the covered employee at least every three years.

§ 51.1-124.37. Investment of assets of the Line of Duty Death and Health Benefits Trust Fund.

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage the assets of the Line of Duty Death and Health Benefits Trust Fund (the Fund) established pursuant to § 9.1-400.1. The Board shall maintain a separate accounting for the assets of the Fund.

B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

C. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax-exempt subsidiary corporations whose actions are within the standard of care in subsection B shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this section.

D. The provisions of §§ 51.1-124.32 through 51.1-124.35 shall apply to the Board's activities with respect to funds in the Fund.

E. The Board may assess the Fund a reasonable administrative fee for its services.

2. That § 9.1-406 of the Code of Virginia is repealed.

3. That the Virginia Retirement System shall develop appropriate guidelines or regulations regarding its administration of the Line of Duty Act (§ 9.1-400 et seq. of the Code of Virginia).

4. That the Department of Human Resource Management shall develop appropriate guidelines or regulations regarding its administration of the health benefits plans under the Line of Duty Act (§ 9.1-400 et seq. of the Code of Virginia).

5. That the Virginia Retirement System and the Department of Human Resource Management shall examine the recommendations in the report of the Joint Legislative Audit and Review Commission regarding the Line of Duty Act mandated by House Joint Resolution 103 (2014), and any other issues that may be of concern, and, with the input of all stakeholders, develop proposals, and where warranted alternative proposals, to clarify all ambiguous provisions of the Act and to make the Act administratively more simple, ensure its long-term fiscal viability, and to improve the way in which it serves line of duty personnel while also considering the interests of the Commonwealth's taxpayers. The proposals shall be provided to the Chairmen of the House Appropriations Committee and the Senate Finance Committee no later than October 1, 2015.

6. That the provisions of the fifth and sixth enactments of this act shall become effective on July 1, 2015. The provisions of all other enactments of this act shall become effective July 1, 2016, and only if reenacted by the 2016 Session of the General Assembly.