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HOUSE BILL NO. 639

Offered January 13, 2016

Prefiled January 11, 2016

A BILL to amend and reenact §§ 65.2-402 and 65.2-402.1 of the Code of Virginia, relating to workers' compensation; presumption of compensability for certain diseases; correctional officers.

Patrons—Bell, John J. and Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-402 and 65.2-402.1 of the Code of Virginia are 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. (Effective until July 1, 2018) Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (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 Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the Department of Alcoholic Beverage Control 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, and (xiv) campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education, and (xv) *correctional officers as defined in § 53.1-1* 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. (Effective July 1, 2018) Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (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 Game and Inland Fisheries, (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, and (xiv) campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education, and (xv) *correctional officers as defined in § 53.1-1* 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 or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having

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59 completed 12 years of continuous service who has a contact with a toxic substance encountered in the
60 line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered
61 by this title, unless such presumption is overcome by a preponderance of competent evidence to the
62 contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected
63 carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is
64 suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

65 D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to
66 invoke them have, if requested by the private employer, appointing authority or governing body
67 employing them, undergone preemployment physical examinations that (i) were conducted prior to the
68 making of any claims under this title that rely on such presumptions, (ii) were performed by physicians
69 whose qualifications are as prescribed by the private employer, appointing authority or governing body
70 employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the
71 private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such
72 persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such
73 examinations.

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

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

86 G. Volunteer emergency medical services personnel, volunteer law-enforcement chaplains, auxiliary
87 and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this
88 section.

89 H. For purposes of this section, "firefighter" includes special forest wardens designated pursuant to
90 § 10.1-1135 and any persons who are employed by or contract with private employers primarily to
91 perform firefighting services.

92 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

93 A. (Effective until July 1, 2018) Hepatitis, meningococcal meningitis, tuberculosis or HIV causing
94 the death of, or any health condition or impairment resulting in total or partial disability of, any (i)
95 salaried or volunteer firefighter, or salaried or volunteer emergency medical services personnel, (ii)
96 member of the State Police Officers' Retirement System, (iii) member of county, city, or town police
97 departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous
98 materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia
99 Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the
100 enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x)
101 special agent of the Department of Alcoholic Beverage Control appointed under the provisions of
102 Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports
103 Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of
104 the police force established and maintained by the Metropolitan Washington Airports Authority, (xii)
105 officer of the police force established and maintained by the Norfolk Airport Authority, (xiii)
106 conservation officer of the Department of Conservation and Recreation commissioned pursuant to
107 § 10.1-115, (xiv) sworn officer of the police force established and maintained by the Virginia Port
108 Authority, ~~or~~ (xv) any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23
109 and employed by any public institution of higher education, *or (xvi) correctional officers as defined in*
110 *§ 53.1-1*, who has a documented occupational exposure to blood or body fluids shall be presumed to be
111 occupational diseases, suffered in the line of government duty, that are covered by this title unless such
112 presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of
113 this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented"
114 if the person covered under this section gave notice, written or otherwise, of the occupational exposure
115 to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed
116 "documented" without regard to whether the person gave notice, written or otherwise, of the
117 occupational exposure to his employer.

118 A. (Effective July 1, 2018) Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the
119 death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried
120 or volunteer firefighter, or salaried or volunteer emergency medical services personnel, (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 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, officer of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority, ~~or~~ (xv) any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education, *or (xvi) correctional officers as defined in § 53.1-1* who has a documented occupational exposure to blood or body fluids 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.

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

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

F. Persons making claims under this title who rely on such presumption shall, upon the request of

182 appointing authorities or governing bodies employing such persons, submit to physical examinations (i)
183 conducted by physicians selected by such appointing authorities or governing bodies or their
184 representatives and (ii) consisting of such tests and studies as may reasonably be required by such
185 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the
186 election of such claimant, be present at such examination.