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SENATE BILL NO. 904

Offered January 19, 2018

A *BILL to amend and reenact §§ 9.1-400 and 9.1-401 of the Code of Virginia, relating to the Line of Duty Act; disabled persons; health insurance.*

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 9.1-400 and 9.1-401 of the Code of Virginia are amended and reenacted 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.

(Effective until January 15, 2018) "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, 65.2-402, and 65.2-402.1 if his position is covered by the applicable statute, 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 emergency medical services agency 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, including a person with a recognized membership status with such fire company or department who is enrolled in a Fire Service Training course offered by the Virginia Department of Fire Programs or any fire company or department training required in pursuit of qualification to become a certified firefighter; a member of any fire company providing fire protection services for facilities of the Virginia National Guard or the Virginia Air 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.

(Effective January 15, 2018) "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, 65.2-402, and 65.2-402.1 if his position is covered by the applicable statute, 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 emergency medical services agency 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, including a person with a recognized membership status with such fire company

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59 or department who is enrolled in a Fire Service Training course offered by the Virginia Department of
60 Fire Programs or any fire company or department training required in pursuit of qualification to become
61 a certified firefighter; a member of any fire company providing fire protection services for facilities of
62 the Virginia National Guard or the Virginia Air National Guard; a member of the Virginia National
63 Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or
64 the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States
65 Code; any special agent of the Virginia Alcoholic Beverage Control Authority; any regular or special
66 conservation police officer who receives compensation from a county, city, or town or from the
67 Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden
68 appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine
69 Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of
70 Emergency Management hazardous materials officer; any other employee of the Department of
71 Emergency Management who is performing official duties of the agency, when those duties are related
72 to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist
73 under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city,
74 or town performing official emergency management or emergency services duties in cooperation with
75 the Department of Emergency Management, when those duties are related to a major disaster or
76 emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of
77 the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared
78 by a local governing body; any nonfirefighter regional hazardous materials emergency response team
79 member; any conservation officer of the Department of Conservation and Recreation commissioned
80 pursuant to § 10.1-115; or any full-time sworn member of the enforcement division of the Department of
81 Motor Vehicles appointed pursuant to § 46.2-217.

82 "Disabled person" means any individual who has been determined to be mentally or physically
83 incapacitated so as to prevent the further performance of his duties at the time of his disability where
84 such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty as the direct
85 or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1,
86 27-40.2, 51.1-813, 65.2-402, and 65.2-402.1 if his position is covered by the applicable statute, in any
87 position listed in the definition of deceased person in this section. "Disabled person" does not include
88 any individual who has been determined to be no longer disabled pursuant to subdivision A 2 of
89 § 9.1-404. "Disabled person" includes any state employee included in the definition of a deceased person
90 who was disabled on or after January 1, 1966.

91 "Eligible dependent" for purposes of continued health insurance pursuant to § 9.1-401 means the
92 natural or adopted child or children of a deceased person or disabled person or of a deceased or disabled
93 person's eligible spouse, ~~provided that any such natural child is born as the result of a pregnancy that~~
94 ~~occurred prior to the time of the employee's death or disability and that any such adopted child is (i)~~
95 ~~adopted prior to the time of the employee's death or disability or (ii) adopted after the employee's death~~
96 ~~or disability if the adoption is pursuant to a preadoptive agreement entered into prior to the death or~~
97 ~~disability.~~ Eligibility will continue until the end of the year in which the eligible dependent reaches age
98 26 or when the eligible dependent ceases to be eligible based on the Virginia Administrative Code or
99 administrative guidance as determined by the Department of Human Resource Management.

100 "Eligible spouse" for purposes of continued health insurance pursuant to § 9.1-401 means the spouse
101 of a deceased person or a disabled person at the time of the death or disability. Eligibility will continue
102 until the eligible spouse dies, ceases to be married to a disabled person, or in the case of the spouse of a
103 deceased person, dies, remarries on or after July 1, 2017, or otherwise ceases to be eligible based on the
104 Virginia Administrative Code or administrative guidance as determined by the Department of Human
105 Resource Management.

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

109 "Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a
110 volunteer who is a member of any fire company or department or rescue squad described in the
111 definition of "deceased person," the county, city, or town that by ordinance or resolution recognized
112 such fire company or department or rescue squad as an integral part of the official safety program of
113 such locality.

114 "Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to
115 § 9.1-400.1.

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

118 "LODA Health Benefit Plans" means the separate health benefits plans established pursuant to
119 § 9.1-401.

120 "Nonparticipating employer" means any employer that is a political subdivision of the

Commonwealth that elected to directly fund the cost of benefits provided under this chapter and not participate in the Fund.

"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.

"VRS" means the Virginia Retirement System.

§ 9.1-401. Continued health insurance coverage for disabled persons, eligible spouses, and eligible dependents.

A. Disabled persons, eligible spouses, and eligible dependents shall be afforded continued health insurance coverage as provided in this section, the cost of which shall be paid by the nonparticipating employer to the Department of Human Resource Management or from the Fund on behalf of a participating employer, as applicable. If any disabled person or eligible spouse is receiving the benefits described in this section and 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 VRS.

B. 1. ~~The~~ *Except as otherwise provided in this section*, continued health insurance coverage provided by this section for all ~~disabled persons~~, eligible spouses, and eligible dependents shall be through separate plans, referred to as the LODA Health Benefits Plans (the Plans), administered by the Department of Human Resource Management. The Plans shall comply with all applicable federal and state laws and shall be modeled upon state employee health benefits program plans. Funding of the Plans' reserves and contingency shall be provided through a line of credit, the amount of which shall be based on an actuarially determined estimate of liabilities. The Department of Human Resource Management shall be reimbursed for health insurance premiums and all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to this section (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and (ii) from a nonparticipating employer for premiums and costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible. If any nonparticipating employer fails to remit such premiums and costs, the Department of Human Resource Management shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, the Department of Human Resource Management may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.

2. In the event that temporary health care insurance coverage is needed for disabled persons, eligible spouses, and eligible dependents during the period of transition into the LODA Health Benefits Plans, the Department of Human Resource Management is authorized to acquire and provide temporary transitional health insurance coverage. The type and source of the transitional health plans shall be within the sole discretion of the Department of Human Resource Management. Transitional coverage for eligible dependents shall comply with the eligibility criteria of the transitional plans until enrollment in the LODA Health Benefits Plan can be completed.

3. *Notwithstanding subdivision 1, disabled persons, and the eligible spouses and eligible dependents of disabled persons, shall continue to receive health insurance coverage in the state or local plan that the disabled person participated in prior to the disability. The cost of continued participation in such plan shall be paid for (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, eligible dependents, and eligible spouses on behalf of participating employers and (ii) by a nonparticipating employer for premiums and costs related to disabled persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible.*

C. 1. a. Except as provided in subdivision 2 and any other law, continued health insurance coverage in any LODA Health Benefits Plans shall not be provided to any person (i) whose coverage under the Plan is based on a deceased person's death or a disabled person's disability occurring on or after July 1, 2017 and (ii) who is eligible for Medicare due to age.

b. Coverage in the LODA Health Benefits Plans shall also cease for any person upon his death.

2. The provisions of subdivision 1 a shall not apply to any disabled person who is eligible for Medicare due to disability under Social Security Disability Insurance or a Railroad Retirement Board Disability Annuity. The Department of Human Resource Management may provide such disabled person coverage under a LODA Health Benefits Plan that is separate from the plan for other persons.

3. Continued health insurance under this section shall also terminate upon the disabled person's return to full duty in any position listed in the definition of deceased person in § 9.1-400. Such disabled person shall promptly notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management upon his return to work.

182 4. Such continued health insurance shall be suspended for the Plan year following a calendar year in
183 which the disabled person whose coverage under the Plan is based on a disability occurring on or after
184 July 1, 2017, has earned income in an amount equal to or greater than the salary of the position held by
185 the disabled person at the time of disability, indexed annually based upon the annual increases in the
186 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
187 by the Bureau of Labor Statistics of the U.S. Department of Labor. Such suspension shall cease the Plan
188 year following a calendar year in which the disabled person has not earned such amount of income. The
189 disabled person shall notify the participating or nonparticipating employer, VRS, and the Department of
190 Human Resource Management no later than March 1 of the year following any year in which he earns
191 income of such amount, and notify the participating or nonparticipating employer, VRS, and the
192 Department of Human Resource Management when he no longer is earning such amount. Upon request,
193 a disabled person shall provide VRS and the Department of Human Resource Management with
194 documentation of earned income.