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HOUSE BILL NO. 1985

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 21, 2021)

(Patron Prior to Substitute—Delegate Hurst)

A BILL to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to workers' compensation; presumption as to death or disability of health care providers from COVID-19.

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, 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 Wildlife Resources; (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; (xv) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education, (xvi) correctional officer as defined in § 53.1-1; or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles 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. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19, an incubation period consistent with COVID-19, and signs and symptoms of COVID-19 that require medical treatment.

C. 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,

60 means an exposure that occurs during the performance of job duties that places a covered employee at
61 risk of infection.

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

67 ~~D.~~ E. 1. Whenever any standard, medically-recognized vaccine or other form of immunization or
68 prophylaxis exists for the prevention of a communicable disease for which a presumption is established
69 under this section, if medically indicated by the given circumstances pursuant to immunization policies
70 established by the Advisory Committee on Immunization Practices of the United States Public Health
71 Service, a person subject to the provisions of this section may be required by such person's employer to
72 undergo the immunization or prophylaxis unless the person's physician determines in writing that the
73 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written
74 declaration, failure or refusal by a person subject to the provisions of this section to undergo such
75 immunization or prophylaxis shall disqualify the person from any presumption established by this
76 section.

77 2. *The presumptions described in subsection B shall not apply to any person offered by such person's*
78 *employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the*
79 *U.S. Food and Drug Administration, unless the person's physician determines in writing that the*
80 *immunization would pose a significant risk to the person's health. Absent such written declaration,*
81 *failure or refusal by a person subject to the provisions of this section to undergo such immunization*
82 *shall disqualify the person from the presumptions described in subsection B.*

83 ~~E.~~ F. 1. The presumptions described in subsection A shall only apply if persons entitled to invoke
84 them have, if requested by the appointing authority or governing body employing them, undergone
85 preemployment physical examinations that (i) were conducted prior to the making of any claims under
86 this title that rely on such presumptions; (ii) were performed by physicians whose qualifications are as
87 prescribed by the appointing authority or governing body employing such persons; (iii) included such
88 appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may
89 have prescribed; and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or
90 HIV at the time of such examinations. The presumptions described in subsection A shall not be effective
91 until six months following such examinations, unless such persons entitled to invoke such presumption
92 can demonstrate a documented exposure during the six-month period.

93 2. *The presumptions described in subsection B shall apply to any person entitled to invoke them for*
94 *any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19*
95 *virus, provided that for any such death or disability that occurred on or after March 12, 2020, and*
96 *prior to December 31, 2021, the claimant received a positive diagnosis of COVID-19 from a licensed*
97 *physician, after either a presumptive positive test or a laboratory-confirmed test for COVID-19, and*
98 *presented with signs and symptoms of COVID-19 that required medical treatment.*

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