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SENATE BILL NO. 904

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 14, 2023)

(Patron Prior to Substitute—Senator DeSteph)

A *BILL to amend and reenact § 65.2-107 of the Code of Virginia, relating to workers' compensation; post-traumatic stress disorder, anxiety disorder, or depressive disorder; law-enforcement officers and firefighters.*

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-107 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-107. Post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by law-enforcement officers and firefighters.

A. As used in this section:

"Anxiety disorder" means a disorder that meets the diagnostic criteria for one or more of the anxiety disorders specified in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association*.

"Depressive disorder" means a disorder that meets the diagnostic criteria for one or more of the depressive disorders specified in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association*.

"Firefighter" means any (i) salaried firefighter, including special forest wardens designated pursuant to § 10.1-1135, emergency medical services personnel, and local or state fire scene investigator and (ii) volunteer firefighter and volunteer emergency medical services personnel.

"In the line of duty" means any action that a law-enforcement officer or firefighter was obligated or authorized to perform by rule, regulation, written condition of employment service, or law.

"Law-enforcement officer" means any (i) member of the State Police Officers' Retirement System; (ii) member of a county, city, or town police department; (iii) sheriff or deputy sheriff; (iv) Department of Emergency Management hazardous materials officer; (v) city sergeant or deputy city sergeant of the City of Richmond; (vi) Virginia Marine Police officer; (vii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (viii) Capitol Police officer; (ix) 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; (x) 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; (xi) officer of the police force established and maintained by the Norfolk Airport Authority; (xii) sworn officer of the police force established and maintained by the Virginia Port Authority; or (xiii) 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.

"Mental health professional" means a board-certified psychiatrist or a psychologist licensed pursuant to Title 54.1 who has experience diagnosing and treating post-traumatic stress disorder.

"Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder as specified in the most recent edition of the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association*.

"Qualifying event" means an incident or exposure occurring in the line of duty on or after July 1, 2020, for post-traumatic stress disorder and for purposes of subdivisions one through four of this definition, on or after July 1, 2023, for anxiety disorder or depressive disorder:

1. Resulting in serious bodily injury or death to any person or persons;
2. Involving a minor who has been injured, killed, abused, or exploited;
3. Involving an immediate threat to life of the claimant or another individual;
4. Involving mass casualties; or
5. Responding to crime scenes for investigation.

B. Post-traumatic stress disorder, *anxiety disorder, or depressive disorder* incurred by a law-enforcement officer or firefighter is compensable under this title if:

1. A mental health professional examines a law-enforcement officer or firefighter and diagnoses the law-enforcement officer or firefighter as suffering from post-traumatic stress disorder, *anxiety disorder, or depressive disorder* as a result of the individual's undergoing a qualifying event;

2. The post-traumatic stress disorder, *anxiety disorder, or depressive disorder* resulted from the law-enforcement officer's or firefighter's acting in the line of duty and, in the case of a firefighter, such firefighter complied with federal Occupational Safety and Health Act standards adopted pursuant to 29

60 C.F.R. 1910.134 and 29 C.F.R. 1910.156;

61 3. The law-enforcement officer's or firefighter's undergoing a qualifying event was a substantial
62 factor in causing his post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder*;

63 4. Such qualifying event, and not another event or source of stress, was the primary cause of the
64 post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder*; and

65 5. The post-traumatic stress disorder, *anxiety disorder*, or *depressive disorder* did not result from any
66 disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or
67 similar action of the law-enforcement officer or firefighter.

68 Any such mental health professional shall comply with any workers' compensation guidelines for
69 approved medical providers, including guidelines on release of past or contemporaneous medical records.

70 C. Notwithstanding any provision of this title, workers' compensation benefits for any
71 law-enforcement officer or firefighter payable pursuant to this section shall (i) include any combination
72 of medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist, temporary
73 total incapacity benefits under § 65.2-500, and temporary partial incapacity benefits under § 65.2-502
74 and (ii) be provided for a maximum of 52 weeks from the date of diagnosis. No medical treatment,
75 temporary total incapacity benefits under § 65.2-500, or temporary partial incapacity benefits under
76 § 65.2-502 shall be awarded beyond four years from the date of the qualifying event that formed the
77 basis for the claim for benefits under this section. The weekly benefits received by a law-enforcement
78 officer or a firefighter pursuant to § 65.2-500 or 65.2-502, when combined with other benefits, including
79 contributory and noncontributory retirement benefits, Social Security benefits, and benefits under a
80 long-term or short-term disability plan, but not including payments for medical care, shall not exceed the
81 average weekly wage paid to such law-enforcement officer or firefighter.

82 D. No later than January 1, 2021, each employer of law-enforcement officers or firefighters shall (i)
83 make peer support available to such law-enforcement officers and firefighters and (ii) refer a
84 law-enforcement officer or firefighter seeking mental health care services to a mental health professional.

85 E. Each fire basic training program conducted or administered by the Department of Fire Programs
86 or a municipal fire department in the Commonwealth shall provide, in consultation with the Department
87 of Behavioral Health and Developmental Services, resilience and self-care technique training for any
88 individual who begins basic training as a firefighter on or after July 1, 2021.