

2023 SESSION

ENROLLED

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-402 of the Code of Virginia, relating to workers' compensation;*
3 *presumption of compensability for certain cancers.*

4 [S 906]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 65.2-402 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or**
9 **heart disease, cancer.**

10 A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of
11 Emergency Management hazardous materials officers or (ii) any health condition or impairment of such
12 firefighters or Department of Emergency Management hazardous materials officers resulting in total or
13 partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are
14 covered by this title unless such presumption is overcome by a preponderance of competent evidence to
15 the contrary.

16 B. Hypertension or heart disease causing the death of, or any health condition or impairment
17 resulting in total or partial disability of any of the following persons who have completed five years of
18 service in their position as (i) salaried or volunteer firefighters, (ii) members of the State Police Officers'
19 Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy
20 sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or
21 deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation
22 police officers who are full-time sworn members of the enforcement division of the Department of
23 Wildlife Resources, (ix) Capitol Police officers, (x) special agents of the Virginia Alcoholic Beverage
24 Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for
25 such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the
26 provisions of this chapter as provided in § 65.2-305, officers of the police force established and
27 maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force
28 established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force
29 established and maintained by the Virginia Port Authority, (xiv) campus police officers appointed under
30 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of
31 higher education, and (xv) salaried or volunteer emergency medical services personnel, as defined in
32 § 32.1-111.1, when such emergency medical services personnel is operating in a locality that has legally
33 adopted a resolution declaring that it will provide one or more of the presumptions under this
34 subsection, shall be presumed to be occupational diseases, suffered in the line of duty, that are covered
35 by this title unless such presumption is overcome by a preponderance of competent evidence to the
36 contrary.

37 C. Leukemia or pancreatic, prostate, rectal, throat, ovarian, breast, colon, brain, or testicular, *bladder,*
38 *or thyroid* cancer causing the death of, or any health condition or impairment resulting in total or partial
39 disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous
40 materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by
41 the Department of State Police, or full-time sworn member of the enforcement division of the
42 Department of Motor Vehicles having completed five years of service shall be presumed to be an
43 occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is
44 overcome by a preponderance of competent evidence to the contrary. For colon, brain, or testicular
45 cancer, the presumption shall not apply for any individual who was diagnosed with such a condition
46 before July 1, 2020. *For bladder or thyroid cancer, the presumption shall not apply for any individual*
47 *who was diagnosed with such a condition before July 1, 2023.*

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

ENROLLED

SB906ER

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

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

69 G. Volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and
70 reserve police are not included within the coverage of this section.

71 H. For purposes of this section, "firefighter" includes special forest wardens designated pursuant to
72 § 10.1-1135 and any persons who are employed by or contract with private employers primarily to
73 perform firefighting services.