

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 714

An Act to amend and reenact § 65.2-402 of the Code of Virginia, relating to presumption as to death or disability from respiratory disease, hypertension or heart disease; Department of Emergency Services hazardous materials officers.

[S 1070]

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

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

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

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters *or Department of Emergency Services hazardous materials officers*, or (ii) any health condition or impairment of such firefighters *or Department of Emergency Services 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. For purposes of this section, the term "firefighter" shall include persons who are employed by or contract with private employers primarily to perform firefighting services.

B. 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 Services hazardous materials officers*, and ~~(v)~~ (vi) city sergeants or deputy city sergeants of the City of Richmond 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, or throat cancer that is caused by a documented contact with a toxic substance that a volunteer or salaried fire fighter *or Department of Emergency Services hazardous materials officer* having completed twelve years of continuous service has encountered in the line of duty and that causes (i) the death of such ~~fire fighter~~ *person* or (ii) any health condition or impairment of such ~~fire fighter~~ *person* resulting in total or partial disability shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal or throat cancer.

D. The presumptions described in subsections A, B, and C of this section shall only apply if persons entitled to invoke them have, if requested by the private employer, 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 private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

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

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

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.