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HOUSE BILL NO. 2366

Offered January 20, 1997

A BILL to amend and reenact § 65.2-401 of the Code of Virginia, relating to workers' compensation; ordinary diseases of life.

Patrons—Croshaw, Abbitt, Albo, Behm, Bloxom, Bryant, Cantor, Councill, Cox, Crouch, Davies, Drake, Hargrove, Heilig, Katzen, Landes, Nelms, Nixon, Parrish, Purkey, Rhodes, Sherwood, Shuler, Tata, Wardrup, Watkins and Weatherholtz; Senators: Benedetti, Bolling, Chichester, Hanger, Martin, Miller, K.G., Newman, Norment, Potts, Reasor, Schrock, Stolle, Stosch and Woods

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-401 of the Code of Virginia is amended and reenacted as follows:

§ 65.2-401. "Ordinary disease of life" coverage.

A. An ordinary disease of life to which the general public is exposed outside of the employment, *including the condition of carpal tunnel syndrome*, may be treated as an occupational disease for purposes of this title if ~~it~~ *each of the following elements* is established by clear and convincing evidence, ~~to a reasonable:~~

1. *To an absolute degree of medical certainty, that it and not probability, the disease* arose out of and in the course of employment as provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of the employment; *more than to a de minimus degree; and that:*

~~12.a. The disease~~ follows as an incident of occupational disease as defined in this title; or

~~2b. The disease~~ is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or

~~3c. The disease~~ is characteristic of the employment ~~and was caused by conditions peculiar to such employment~~, which shall be established by proving that both the claimant's job and similar jobs within the workplace or industry cause said disease, and was not caused by conditions to which the employee was exposed outside the employment more than to a de minimus degree.

B. For purposes of carpal tunnel syndrome, the minimum criteria for a duly qualified physician to express an opinion with the degree of medical certainty set forth in subsection A, requires that carpal tunnel syndrome shall be diagnosed and communicated to the claimant by a duly qualified physician who, either personally or through someone under his supervision, in developing the diagnosis, (i) accurately documents the claimant's symptoms as well as past and present exposure to the causative hazards of carpal tunnel syndrome, both within and without the workplace, (ii) performs and documents the results of a physical examination of the claimant which includes, but shall not be limited to, conducting a Phalen's test, a carpal canal pressure study, and an examination of Tinel's sign at the wrist, and (iii) performs and documents the results of objective and reproducible electrodiagnostic tests designed to determine the presence or absence of carpal tunnel syndrome. Nothing in this subsection shall in any manner limit the claimant's burden of proof as set forth in subsection A.

C. For any recovery hereunder for carpal tunnel syndrome, a claimant shall not be entitled to recovery of benefits under § 65.2-503.

INTRODUCED

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