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SENATE BILL NO. 181

Offered January 12, 2022

Prefiled January 10, 2022

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 from COVID-19; vaccine.

Patron—Saslaw

Referred to Committee on Commerce and Labor

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 subsection, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this subsection 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. 1. 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 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 and signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in § 9.1-101; (iii) correctional officer, as defined in § 53.1-1; or (iv) regional jail officer shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, 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, 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

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59 established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis,
60 meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory,
61 salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which
62 infectious airborne or blood-borne organisms can be transmitted between persons.

63 "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other
64 strain of hepatitis generally recognized by the medical community.

65 "HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or
66 type II, causing immunodeficiency syndrome.

67 "Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV,
68 means an exposure that occurs during the performance of job duties that places a covered employee at
69 risk of infection.

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

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

85 2. The presumptions described in subdivision B 1 or 2 shall not apply to any person ~~offered by such~~
86 ~~person's employer who fails or refuses to receive~~ a vaccine for the prevention of COVID-19 *either*
87 *approved by or with an Emergency Use Authorization issued by the U.S. Food and Drug*
88 *Administration, unless the person is immunized or the person's physician determines in writing that the*
89 *immunization would pose a significant risk to the person's health. Absent such written declaration,*
90 *failure or refusal by a person subject to the provisions of this section to undergo such immunization*
91 *shall disqualify the person from the presumptions described in subdivision B 1 or 2.*

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

102 2. The presumptions described in subdivision B 1 shall apply to any person entitled to invoke them
103 for any death or disability occurring on or after March 12, 2020, caused by infection from the
104 COVID-19 virus, provided that for any such death or disability that occurred on or after March 12,
105 2020, and prior to December 31, 2021, and;

106 a. Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed
107 physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a
108 laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that
109 required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required
110 medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19; or

111 b. On or after July 1, 2020, and prior to December 31, 2021, the claimant received a positive
112 diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after a
113 presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and
114 symptoms of COVID-19 that required medical treatment.

115 3. The presumptions described in subdivision B 2 shall apply to any person entitled to invoke them
116 for any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19
117 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to
118 December 31, 2021, the claimant received a diagnosis of COVID-19 from a licensed physician, after
119 either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs
120 and symptoms of COVID-19 that required medical treatment.

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