

## SUBCOMMITTEE:

1 HOUSE BILL NO. 1985  
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE  
3 (Proposed by the House Committee on Labor and Commerce  
4 on January 19, 2021)  
5 (Patron Prior to Substitute--Delegate Hurst)

6 A BILL to amend and reenact § 65.2-402.1 of the Code of Virginia, relating to workers' compensation;  
7 presumption as to death or disability of health care providers from COVID-19.

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

9 **1. That § 65.2-402.1 of the Code of Virginia is amended and reenacted as follows:**

10 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

11 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health  
12 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,  
13 or salaried or volunteer emergency medical services personnel; (ii) member of the State Police Officers'  
14 Retirement System; (iii) member of county, city, or town police departments; (iv) sheriff or deputy  
15 sheriff; (v) Department of Emergency Management hazardous materials officer; (vi) city sergeant or  
16 deputy city sergeant of the City of Richmond; (vii) Virginia Marine Police officer; (viii) conservation  
17 police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife  
18 Resources; (ix) Capitol Police officer; (x) special agent of the Virginia Alcoholic Beverage Control  
19 Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (xi) for such period  
20 that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this  
21 chapter as provided in § 65.2-305, officer of the police force established and maintained by the  
22 Metropolitan Washington Airports Authority; (xii) officer of the police force established and maintained  
23 by the Norfolk Airport Authority; (xiii) conservation officer of the Department of Conservation and  
24 Recreation commissioned pursuant to § 10.1-115; (xiv) sworn officer of the police force established and  
25 maintained by the Virginia Port Authority; (xv) campus police officer appointed under Article 3 (§ 23.1-  
26 809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education, (xvi)

27 correctional officer as defined in § 53.1-1<sup>2</sup>; or (xvii) full-time sworn member of the enforcement division  
28 of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids  
29 shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered  
30 by this title unless such presumption is overcome by a preponderance of competent evidence to the  
31 contrary. For purposes of this ~~section~~ subsection, an occupational exposure occurring on or after July 1,  
32 2002, shall be deemed "documented" if the person covered under this ~~section~~ subsection gave notice,  
33 written or otherwise, of the occupational exposure to his employer, and an occupational exposure  
34 occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave  
35 notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as  
36 defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor  
37 Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal  
38 meningitis, or HIV before July 1, 2020.

39 B. COVID-19 causing the death of, or any health condition or impairment resulting in total or  
40 partial disability of, any health care provider, as defined in 8.01-581.1, who as part of the provider's  
41 employment is directly involved in diagnosing or treating persons known or suspected to have COVID-  
42 19, shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is  
43 covered by this title unless such presumptions are overcome by a preponderance of competent evidence  
44 to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive  
45 diagnostic test for COVID-19, an incubation period consistent with COVID-19, and signs and symptoms  
46 of COVID-19 that require medical treatment.

47 C. As used in this section:

48 "Blood or body fluids" means blood and body fluids containing visible blood and other body fluids  
49 to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as  
50 established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis,  
51 meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory,  
52 salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which  
53 infectious airborne or blood-borne organisms can be transmitted between persons.

54 "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C<sub>2</sub> or any  
55 other strain of hepatitis generally recognized by the medical community.

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

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

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

66 ~~D-E.~~ 1. Whenever any standard, medically-recognized vaccine or other form of immunization or  
67 prophylaxis exists for the prevention of a communicable disease for which a presumption is established  
68 under this section, if medically indicated by the given circumstances pursuant to immunization policies  
69 established by the Advisory Committee on Immunization Practices of the United States Public Health  
70 Service, a person subject to the provisions of this section may be required by such person's employer to  
71 undergo the immunization or prophylaxis unless the person's physician determines in writing that the  
72 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written  
73 declaration, failure or refusal by a person subject to the provisions of this section to undergo such  
74 immunization or prophylaxis shall disqualify the person from any presumption established by this section.

75 2. The presumptions described in subsection B shall not apply to any person offered by such  
76 person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization  
77 issued by the U.S. Food and Drug Administration, unless the person's physician determines in writing that  
78 the immunization would pose a significant risk to the person's health. Absent such written declaration,  
79 failure or refusal by a person subject to the provisions of this section to undergo such immunization shall  
80 disqualify the person from the presumptions described in subsection B.

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

91 2. The presumptions described in subsection B shall apply to any person entitled to invoke them  
92 for any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19  
93 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to  
94 December 31, 2021, the claimant received a positive diagnosis of COVID-19 from a licensed physician,  
95 after either a presumptive positive test or a laboratory-confirmed test for COVID-19, and presented with  
96 signs and symptoms of COVID-19 that required medical treatment.

97 ~~F-G.~~ Persons making claims under this title who rely on such presumption shall, upon the request  
98 of appointing authorities or governing bodies employing such persons, submit to physical examinations  
99 (i) conducted by physicians selected by such appointing authorities or governing bodies or their  
100 representatives and (ii) consisting of such tests and studies as may reasonably be required by such  
101 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election  
102 of such claimant, be present at such examination.

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