

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; throat*
 3 *cancer.*

4 [S 920]

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 heart**
 9 **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 covered
 14 by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.15 B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in
 16 total or partial disability of any of the following persons who have completed five years of service in their
 17 position as (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System,
 18 (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of
 19 Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City
 20 of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn
 21 members of the enforcement division of the Department of Wildlife Resources, (ix) Capitol Police officers,
 22 (x) special agents of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of
 23 Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports
 24 Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the
 25 police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of
 26 the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the
 27 police force established and maintained by the Virginia Port Authority, (xiv) campus police officers
 28 appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public
 29 institution of higher education, and (xv) salaried or volunteer emergency medical services personnel, as
 30 defined in § 32.1-111.1, when such emergency medical services personnel is operating in a locality that has
 31 legally adopted a resolution declaring that it will provide one or more of the presumptions under this
 32 subsection, shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this
 33 title unless such presumption is overcome by a preponderance of competent evidence to the contrary.34 C. Leukemia or pancreatic, prostate, rectal, throat, ovarian, breast, colon, brain, testicular, bladder, or
 35 thyroid cancer causing the death of, or any health condition or impairment resulting in total or partial
 36 disability of, any of the following persons who have completed five years of service in their position as (i)
 37 salaried or volunteer firefighters; (ii) Department of Emergency Management hazardous materials officers;
 38 (iii) commercial vehicle enforcement officers or motor carrier safety troopers employed by the Department of
 39 State Police; (iv) arson investigators or bomb investigators employed by the Department of State Police; (v)
 40 full-time sworn members of the enforcement division of the Department of Motor Vehicles; or (vi) members
 41 of the State Police Officers' Retirement System who collect, analyze, or handle hazardous materials, as
 42 defined in § 44-146.34, infectious biological substances and radiological agents, as defined in § 18.2-52.1,
 43 fentanyl or fentanyl analogs, or methamphetamine, its salts, isomers, or salts of its isomers shall be presumed
 44 to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such
 45 presumption is overcome by a preponderance of competent evidence to the contrary. For colon, brain, or
 46 testicular cancer, the presumption shall not apply for any individual who was diagnosed with such a condition
 47 before July 1, 2020. For bladder or thyroid cancer, the presumption shall not apply for any individual who
 48 was diagnosed with such a condition before July 1, 2023. *For throat cancer, the presumption shall include*
 49 *cancer that forms in the tissues of the pharynx, larynx, adenoid, tonsil, esophagus, trachea, nasopharynx,*
 50 *oropharynx, or hypopharynx.*51 D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke
 52 them have, if requested by the private employer, appointing authority or governing body employing them,
 53 undergone preemployment physical examinations that (i) were conducted prior to the making of any claims
 54 under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as
 55 prescribed by the private employer, appointing authority or governing body employing such persons, (iii)
 56 included such appropriate laboratory and other diagnostic studies as the private employer, appointing

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57 authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases,
58 hypertension, cancer or heart disease at the time of such examinations.

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

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

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

73 H. For purposes of this section, "firefighter" includes special forest wardens designated pursuant to §
74 10.1-1135 and any persons who are employed by or contract with private employers primarily to perform
75 firefighting services.

76 **2. That the provisions of § 65.2-402 of the Code of Virginia, as amended by this act, describing the**
77 **worker's compensation occupational disease presumption for throat cancer shall only be applicable to**
78 **a disease diagnosed on and after July 1, 2025.**