HOUSE BILL 765

K1 EMERGENCY BILL 1lr0344

By: Delegate Terrasa
Introduced and read first time: January 29, 2021
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 Workers’ Compensation – Occupational Disease Presumptions – Novel Coronavirus (Essential Workers’ Compensation Act)

3 FOR the purpose of providing that certain firefighters, rescue squad members, advanced life support unit members, police officers, sheriffs, deputy sheriffs, correctional officers, health care workers, and child care workers who are suffering from the effects of severe acute respiratory syndrome coronavirus 2 are presumed, under certain circumstances, to have an occupational disease that was suffered in the line of duty or course of employment and is compensable in a certain manner; requiring that an individual who is eligible for benefits under certain provisions of this Act provide a copy of a certain test or certain written documentation to the employer or insurer; establishing the date of injury; specifying that a certain individual not entitled to a certain presumption is not precluded from claiming an occupational disease or personal injury under State law; providing that a certain presumption may be rebutted only under certain circumstances; defining certain terms; making this Act an emergency measure; and generally relating to occupational disease presumptions under the workers’ compensation law.

19 BY repealing and reenacting, with amendments,

20 Article – Labor and Employment
21 Section 9–503
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2020 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 Article – Labor and Employment

27 9–503.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
A paid firefighter, paid fire fighting instructor, paid rescue squad member, paid advanced life support unit member, or sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9–234 of this title is presumed to have an occupational disease that was suffered in the line of duty and is compensable under this title if:

(a) (1) the individual has heart disease, hypertension, or lung disease;

(2) the heart disease, hypertension, or lung disease results in partial or total disability or death; and

(3) in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, the individual has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

(b) (1) A paid police officer employed by an airport authority, a county, the Maryland–National Capital Park and Planning Commission, a municipality, or the State, a deputy sheriff of Montgomery County, or, subject to paragraph (2) of this subsection, a deputy sheriff of Anne Arundel County, Anne Arundel County detention officer, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George’s County deputy sheriff, Prince George’s County correctional officer, or deputy sheriff of Allegany County is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if:

(i) the police officer, deputy sheriff, or correctional officer is suffering from heart disease or hypertension; and

(ii) the heart disease or hypertension results in partial or total disability or death.

(2) (i) A deputy sheriff of Anne Arundel County, Anne Arundel County detention officer, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George’s County deputy sheriff, or Prince George’s County correctional officer is entitled to the presumption under this subsection only to the extent that the individual suffers from heart disease or hypertension that is more severe than the individual’s heart disease or hypertension condition existing prior to the individual’s employment as a deputy sheriff of Anne Arundel County, Anne Arundel County detention officer, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George’s County deputy sheriff, or Prince George’s County correctional officer.

(ii) To be eligible for the presumption under this subsection, a deputy sheriff of Anne Arundel County, Anne Arundel County detention officer, deputy sheriff of
Baltimore City, Montgomery County correctional officer, Prince George’s County deputy
sheriff, or Prince George’s County correctional officer, as a condition of employment, shall
submit to a medical examination to determine any heart disease or hypertension condition
existing prior to the individual’s employment as a deputy sheriff of Anne Arundel County,
Anne Arundel County detention officer, deputy sheriff of Baltimore City, Montgomery
County correctional officer, Prince George’s County deputy sheriff, or Prince George’s
County correctional officer.

(c) A paid firefighter, paid fire fighting instructor, paid rescue squad member,
paid advanced life support unit member, or a sworn member of the Office of the State Fire
Marshal employed by an airport authority, a county, a fire control district, a municipality,
or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue
squad member, or volunteer advanced life support unit member who is a covered employee
under § 9–234 of this title is presumed to be suffering from an occupational disease that
was suffered in the line of duty and is compensable under this title if:

(1) the individual has leukemia or prostate, rectal, throat, multiple
myeloma, non–Hodgkin’s lymphoma, brain, testicular, bladder, kidney or renal cell, or
breast cancer that is caused by contact with a toxic substance that the individual has
encountered in the line of duty;

(2) the individual has completed at least 10 years of cumulative service
within the State as a firefighter, a fire fighting instructor, a rescue squad member, or an
advanced life support unit member or in a combination of those jobs;

(3) the cancer or leukemia results in partial or total disability or death; and

(4) in the case of a volunteer firefighter, volunteer fire fighting instructor,
volunteer rescue squad member, or volunteer advanced life support unit member, the
individual has met a suitable standard of physical examination before becoming a
firefighter, fire fighting instructor, rescue squad member, or advanced life support unit
member.

(d) (1) A paid law enforcement employee of the Department of Natural
Resources who is a covered employee under § 9–207 of this title and a park police officer of
the Maryland–National Capital Park and Planning Commission is presumed to have an
occupational disease that was suffered in the line of duty and is compensable under this
title if the employee:

(i) is suffering from Lyme disease; and

(ii) was not suffering from Lyme disease before assignment to a
position that regularly places the employee in an outdoor wooded environment.

(2) The presumption under this subsection for a park police officer of the
Maryland–National Capital Park and Planning Commission shall only apply:
(i) during the time that the park police officer is assigned to a position that regularly places the park police officer in an outdoor wooded environment; and

(ii) for 3 years after the last date that the park police officer was assigned by the Maryland–National Capital Park and Planning Commission to a position that regularly placed the officer in an outdoor wooded environment.

(E) A PAID FIREFIGHTER, PAID RESCUE SQUAD MEMBER, PAID ADVANCED LIFE SUPPORT UNIT MEMBER, VOLUNTEER FIREFIGHTER, VOLUNTEER RESCUE SQUAD MEMBER, VOLUNTEER ADVANCED LIFE SUPPORT UNIT MEMBER, PAID POLICE OFFICER EMPLOYED BY AN AIRPORT AUTHORITY, A COUNTY, A MUNICIPALITY, OR THE STATE, SHERIFF, DEPUTY SHERIFF, OR CORRECTIONAL OFFICER IS PRESUMED TO BE SUFFERING FROM AN OCCUPATIONAL DISEASE THAT WAS SUFFERED IN THE LINE OF DUTY AND IS COMPENSABLE UNDER THIS TITLE IF:

(1) THE INDIVIDUAL IS SUFFERING FROM THE EFFECTS OF SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2;

(2) THE INDIVIDUAL’S DUTIES REQUIRED THE INDIVIDUAL TO BE IN DIRECT CONTACT WITH MEMBERS OF THE PUBLIC; AND

(3) THE INDIVIDUAL HAS BEEN DIAGNOSED WITH COVID–19 OR TESTS POSITIVE FOR SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 OR SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 ANTIBODIES.

(F) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) “CHILD CARE WORKER” MEANS AN INDIVIDUAL WHO IS REQUIRED TO PROVIDE CHILD CARE TO FIRST RESPONDERS OR HEALTH CARE WORKERS DURING A DECLARED STATE OF EMERGENCY OR UNDER AN EXECUTIVE ORDER ISSUED BY THE GOVERNOR.

(III) “HEALTH CARE WORKER” MEANS AN INDIVIDUAL WHOSE PRIMARY PLACE OF EMPLOYMENT IS A FACILITY LICENSED UNDER TITLE 19 OF THE HEALTH – GENERAL ARTICLE OR AN INDIVIDUAL EMPLOYED IN A HEALTH CARE, HOME CARE, OR LONG–TERM CARE SETTING WHOSE DUTIES INCLUDE DIRECT PATIENT CARE OR ANCILLARY WORK IN AREAS WHERE PATIENTS DIAGNOSED WITH COVID–19 ARE TREATED.

(2) A HEALTH CARE WORKER OR CHILD CARE WORKER IS PRESUMED TO BE SUFFERING FROM AN OCCUPATIONAL DISEASE THAT WAS SUFFERED IN THE COURSE OF EMPLOYMENT AND IS COMPENSABLE UNDER THIS TITLE IF:
(I) THE INDIVIDUAL IS SUFFERING FROM THE EFFECTS OF SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2;

(II) THE INDIVIDUAL’S DUTIES REQUIRED THE INDIVIDUAL TO:

1. BE IN DIRECT CONTACT WITH PATIENTS OR THE CHILDREN OF FIRST RESPONDERS OR HEALTH CARE WORKERS; OR

2. OCCUPY, CLEAN, OR REPAIR AREAS OCCUPIED BY PATIENTS OR THE CHILDREN OF FIRST RESPONDERS OR HEALTH CARE WORKERS; AND

(III) THE INDIVIDUAL HAS BEEN DIAGNOSED WITH COVID–19 OR TESTS POSITIVE FOR SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 OR SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 ANTIBODIES.

(G) (1) AN INDIVIDUAL WHO IS ELIGIBLE FOR BENEFITS UNDER SUBSECTION (E) OR (F) OF THIS SECTION SHALL PROVIDE A COPY OF THE POSITIVE TEST OR THE WRITTEN DOCUMENTATION CONFIRMING THE DIAGNOSIS TO THE EMPLOYER OR INSURER.

(2) THE DATE OF INJURY FOR AN INDIVIDUAL WHO IS ELIGIBLE FOR BENEFITS UNDER SUBSECTION (E) OR (F) OF THIS SECTION SHALL BE THE FIRST DATE ON WHICH THE EMPLOYEE WAS UNABLE TO WORK DUE TO A DIAGNOSIS OF COVID–19 OR DUE TO SYMPTOMS THAT WERE LATER DIAGNOSED AS COVID–19, WHICHEVER OCCURRED FIRST.

(3) AN EMPLOYEE WHO HAS BEEN DIAGNOSED WITH COVID–19 BUT WHO IS NOT ELIGIBLE FOR BENEFITS UNDER SUBSECTION (E) OR (F) OF THIS SECTION IS NOT PRECLUDED FROM CLAIMING AN OCCUPATIONAL DISEASE OR FROM CLAIMING A PERSONAL INJURY UNDER STATE LAW.

(4) THE PRESUMPTION ESTABLISHED UNDER SUBSECTIONS (E) AND (F) OF THIS SECTION MAY BE REBUTTED ONLY IF THE EMPLOYER OR INSURER SHOWS THE EMPLOYMENT WAS NOT A DIRECT CAUSE OF THE DISEASE.

[(e)] (H) (1) Except as provided in paragraph (2) of this subsection, any paid firefighter, paid fire fighting instructor, sworn member of the Office of the State Fire Marshal, paid police officer, paid law enforcement employee of the Department of Natural Resources, deputy sheriff of Anne Arundel County, Anne Arundel County detention officer, park police officer of the Maryland–National Capital Park and Planning Commission, deputy sheriff of Montgomery County, deputy sheriff of Baltimore City, Montgomery County correctional officer, deputy sheriff of Prince George’s County, or Prince George’s
County correctional officer who is eligible for benefits under subsection (a), (b), (c), [or] (d), OR (E) of this section or the dependents of those individuals shall receive the benefits in addition to any benefits that the individual or the dependents of the individual are entitled to receive under the retirement system in which the individual was a participant at the time of the claim.

(2) The benefits received under this title shall be adjusted so that the weekly total of those benefits and retirement benefits does not exceed the weekly salary that was paid to the paid law enforcement employee of the Department of Natural Resources, a park police officer of the Maryland–National Capital Park and Planning Commission, firefighter, fire fighting instructor, sworn member of the Office of the State Fire Marshal, police officer, deputy sheriff, Prince George’s County or Montgomery County correctional officer, or Anne Arundel County detention officer.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.