

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 789

An Act to amend and reenact §§ 9.1-101, 19.2-12, 28.2-100, 28.2-106, 28.2-107, 28.2-108, and 65.2-402 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 28.2-106.1, relating to Virginia Marine Police.

[S 326]

Approved April 8, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 19.2-12, 28.2-100, 28.2-106, 28.2-107, 28.2-108, and 65.2-402 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 28.2-106.1 as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so and (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities employs officers appointed under § 15.2-1737, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.) of this chapter, but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities.

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage Control; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Patrol Police; (iv) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) agent, investigator, or

inspector appointed under § 56-334; or (vi) investigator who is a full-time sworn member of the security division of the State Lottery Department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office. Full-time sworn members of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications shall be deemed to be "law-enforcement officers" when fulfilling their duties pursuant to § 46.2-217.

§ 19.2-12. Who are conservators of the peace.

Every judge throughout the Commonwealth and every magistrate within the geographical area for which he is appointed or elected, shall be a conservator of the peace. In addition, every commissioner in chancery, while sitting as such commissioner; any special agent or law-enforcement officer of the United States Department of Justice, National Marine Fisheries Service of the United States Department of Commerce, Department of Treasury, Department of Agriculture, Department of Defense, Department of State, and Department of Interior; any inspector, law-enforcement official or police personnel of the United States Postal Inspection Service; any United States marshal or deputy United States marshal whose duties involve the enforcement of the criminal laws of the United States; any officer of the Virginia Marine ~~Patrol~~ Police; any criminal investigator of the United States Department of Labor; and any special agent of the United States Naval Criminal Investigative Service, shall be a conservator of the peace, while engaged in the performance of their official duties.

§ 28.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources.

"Fish" or "marine fish" means those finfish species which spend a major portion of their lives in marine or estuarine waters. Sunfish, crappies, and carp are not considered to be marine fish.

"Fishing", "fisheries" or "to fish" means all operations involved in (i) taking or catching, (ii) using, setting or operating apparatus employed in killing, taking or catching, or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

"Habitat" means those state-owned bottomlands, tidal wetlands and coastal primary sand dunes which are subject to regulation under Subtitle III of this title.

"Marine organisms" means those species other than marine finfish or marine shellfish which inhabit marine or estuarine waters. Terrapin and marine mammals are considered to be marine organisms.

"Marine shellfish" or "shellfish" means such species of mollusca as oysters and clams, and such species of crustacea as crabs.

"Officer" means a member of the Virginia Marine ~~Patrol~~ Police.

"Territorial sea" means the waters within the belt, three nautical miles wide, that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York; and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

§ 28.2-106. Virginia Marine Police; law-enforcement responsibilities; qualifications; oath.

A. The law-enforcement division of the Commission shall be designated as the Virginia Marine ~~Patrol~~ Police. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law, including but not limited to:

1. Patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea;

2. Enforcing marine fishery and habitat conservation laws and regulations;

3. Enforcing health laws pertaining to the harvesting of seafood from condemned areas;

4. Enforcing or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water;

5. Providing for water-borne safety; and

6. Conducting search and rescue activities; ; and

7. *Protecting from terrorist attack federal and state water-related installations and other water-related locations within the tidal waters of the Commonwealth as may be designated by federal or state officials as important to national security.*

B. Officers of the Virginia Marine ~~Patrol~~ Police shall have the same powers as (i) sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth, and (ii) regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1.

C. A person shall be (i) at least twenty-one years old and (ii) a high school graduate or equivalent to qualify for appointment as an officer.

D. Each officer shall qualify before the clerk of the circuit court of the county or city in which he

resides, or in which his district may be, by taking the oaths prescribed by law.

§ 28.2-106.1. Patrol and enforcement of federal safety zones and restricted areas.

Pursuant to authority provided in 33 U.S.C. § 1226 (B) (1), the Virginia Marine Police may patrol and enforce all federal safety zones located within the tidal waters of the Commonwealth, including but not limited to those safety zones designated in 33 CFR Part 165.501 and 33 CFR Part 165.504. Pursuant to authority provided in 33 U.S.C. § 1225, the Virginia Marine Police may patrol and enforce all federal restricted areas located within the tidal waters of the Commonwealth.

§ 28.2-107. Commission to implement radio system.

The Commission shall take steps to implement an effective marine ~~patrol~~ police radio dispatch system. In establishing and operating such a system on a permanent basis, the Commissioner may negotiate appropriate leases or other necessary agreements for base radio stations.

§ 28.2-108. Marine Patrols Fund continued.

A. The Marine Patrols Fund is continued and hereinafter referred to as the Fund, which shall consist of moneys appropriated to it by the General Assembly. The Comptroller shall annually distribute moneys from the Fund for the following purposes:

1. To cover the Commission's costs for its operation of a marine ~~patrol~~ police dispatch service.

2. To reimburse each county or city in Tidewater Virginia or any county abutting Smith Mountain Lake for its operation of a marine patrol or for providing marine patrol services in waters under the jurisdiction of the Commonwealth. The amount to be paid to each county or city shall be as specifically provided for in the General Appropriations Act. The Comptroller, upon certification by the Commissioner, shall make such payments no later than February 1. The total amount provided to any county or city shall not exceed twenty dollars per motorboat registered in the locality on January 1 of that year, as determined by the records of the Board of Game and Inland Fisheries.

B. If total distributions allowable under subsection A of this section exceed the amount of revenues appropriated to the Fund, each qualifying county or city shall receive a prorated share.

C. The Commissioner may obtain from any county or city seeking funds under this section any information he needs to determine the amount of funds to which such county or city may be entitled.

D. For the purposes of this section, the terms "marine patrol" and "marine patrol services" mean water-borne law-enforcement, safety, and rescue activities.

§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine ~~Patrol~~ Police officers, (viii) game wardens who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, and (x) special agents of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter or Department of Emergency Management hazardous materials officer having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, 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, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C of this section shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv)

found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

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

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

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § 10.1-1135.