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HOUSE BILL NO. 1348

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 18.2-51.1 and 65.2-101 of the Code of Virginia and to amend the Code of Virginia by adding in Title 44 a chapter numbered 3.6, consisting of sections numbered 44-146.41 through 44-146.46, relating to the Virginia Search and Rescue Training and Response Program.

Patrons—Bell and Cline

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-51.1 and 65.2-101 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 44 a chapter numbered 3.6, consisting of sections numbered 44-146.41 through 44-146.46 as follows:

§ 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service providers; penalty; lesser-included offense.

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter in § 44-146.41, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subsection (g) of § 18.2-10, a fine of not more than \$100,000. Upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, he shall be guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of one year.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

As used in this section, "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; any game warden appointed pursuant to § 29.1-200 and auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

As used in this section, "search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city or town of the Commonwealth.

The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

CHAPTER 3.6.**VIRGINIA SEARCH AND RESCUE TRAINING AND RESPONSE PROGRAM.**

§ 44-146.41. Purpose; definitions.

A. The purpose of this chapter is to provide for the development and implementation of a program to protect and aid persons in the Commonwealth who become missing, lost, stranded, or require specialized search and rescue assistance beyond the scope of the service regularly provided by fire and emergency medical response personnel. This program shall be known as the Virginia Search and Rescue Training and Response Program. For purposes of this chapter, search and rescue shall not include the pursuit of fleeing or missing felons, escaped convicts, runaways, a search conducted by firefighters in a burning building, or a mine incident.

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B. As used in this chapter, unless the context requires otherwise:

"Coordinator" means the Coordinator of Emergency Management.

"Department" means the Department of Emergency Management.

"Political subdivision" means any county or city in the Commonwealth, and any town with a population greater than 5,000 that chooses to maintain an emergency management program separate from the county in which the town is located.

"Search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance adopted by the governing body of a political subdivision, or is a member of an organization that has entered into a Memorandum of Understanding by the Department pursuant to this chapter.

§ 44-146.42. Powers and duties of the Department.

The Department shall have the following powers and duties in carrying out the purposes set forth in this chapter:

1. Develop policies, guidelines, and regulations to implement the Search and Rescue Training and Response Program;

2. Appoint a Virginia Search and Rescue Coordinator to administer the Search and Rescue Training and Response Program;

3. Establish a Virginia Emergency Operations Center as the rescue coordination center for the state-level coordination of search and rescue activities and resources. The Center shall also coordinate the deployment of state search and rescue resources for national and international search and rescue incidents, upon request. Requests for state or federal SAR coordination shall be made through the Virginia Emergency Operations Center;

4. Develop training standards and conduct search and rescue training programs for search and rescue personnel, certify search and rescue trainers and personnel, and maintain a database of individuals certified in search and rescue in the Commonwealth;

5. Issue mission numbers for search and rescue incidents, maintain a database of search and rescue incidents in the Commonwealth, and compile statistics related to search and rescue incidents;

6. Enter into agreements with federal and state agencies and political subdivisions, and enter into memoranda of understanding with search and rescue organizations, for the purpose of coordinating and conducting search and rescue operations, and to ensure search and rescue response within specific geographic regions of the Commonwealth or statewide. The Department shall issue identification and credentials to search and rescue personnel with these agencies, political subdivisions, and organizations;

7. Serve as responsible entity for responding to search and rescue incidents involving emergency beacon signals within the boundaries of the Commonwealth. Such signals shall include Emergency Locating Transmitter signals generated from aircraft, Emergency Position Indicator Radio Beacon signals generated from marinecraft, and transmissions from Personal Locator Beacons;

8. Coordinate the deployment of Urban Search and Rescue Task Forces in accordance with agreements between federal, state, and local agencies;

9. Apply for grants and other financial assistance to support search and rescue activities and training in the Commonwealth; and

10. Carry out other activities as necessary to further the safety of the citizens of the Commonwealth pertaining to SAR.

§ 44-146.43. Immunity from liability.

Neither the Commonwealth or any political subdivision thereof, nor any search and rescue organization or federal agency, or their representatives, shall be liable for the death of or injury to any person or damage to property as a result of search and rescue activities performed in accordance with this chapter, except where such death, injury, or damage results from gross negligence, recklessness, or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled to under state or federal law.

§ 44-146.44. Political subdivisions; SAR coordinator.

A. Each political subdivision shall designate a local search and rescue commander. In the absence of a specific designation, the chief law-enforcement officer of that subdivision shall serve as the commander. The local commander shall be responsible for search and rescue operations within the respective political subdivision, but may transfer control of a specific incident or operation to an incident commander. Authority over a missing persons search may be transferred to the Virginia State Police at the discretion of the local commander.

B. The local commander shall notify the Virginia Emergency Operation Center of any ongoing search incidents for a missing person that has required the deployment of field resources for an off-road search, and has been in progress for at least four hours. However, nothing in this subsection shall be construed to require a waiting period for a political subdivision to request state assistance in a search and rescue operation. The results of each incident reported under this subsection shall be reported to the Virginia Emergency Operation Center within 20 days of locating the subject or search suspension,

on forms to be provided by the Department.

§ 44-146.45. Memoranda of Understanding.

A. The Department may enter into memoranda of understanding with search and rescue organizations to provide search and rescue services on behalf of the Department. To enter into a memorandum, the search and rescue personnel with the organization must comply with or exceed state search and rescue training standards. A memorandum of understanding shall be valid for a specified period of time. The Department, in its discretion, may revoke or suspend a memorandum of understanding if the search and rescue organization fails to comply with requirements and agreements set forth in the memorandum, or for due cause. A search and rescue organization may revoke the memorandum at any time by providing written notification of the revocation.

B. Search and rescue personnel who are members of a search and rescue organization holding a valid memorandum of understanding with the Department shall be considered volunteer firefighters under the Code of Virginia, and shall be entitled to benefits as such.

§ 44-146.46. Virginia Search and Rescue Advisory Council.

A. There is hereby created a Virginia Search and Rescue Advisory Council (the Council). The Council shall consist of seven members as follows: the Director of the Department of Emergency Management, or his designee, shall serve *ex officio*; three members to be appointed by the Governor, one of whom shall have search and rescue training, and two of whom shall be citizens at large; two members to be appointed by the Speaker of the House of Delegates, one of whom may be selected from a list of individuals recommended by the Department of State Police and one of whom shall be an Emergency Medical Technician; and one member to be appointed by the Senate Committee on Rules who shall have federal emergency management experience. The Council shall provide recommendations for the testing of organizations seeking to enter into a memorandum or understanding, recommendations as to the development and updating of search and rescue training standards, and advice to the Coordinator on the general development of the Search and Rescue Training and Response Program including, but not limited to, planning, organization, equipment, funding, and accident prevention.

B. The Department shall provide staff support to the Council. Expenses incurred as a result of Council activities may, at the discretion of the Department, be paid or absorbed either in part or in whole by the Department.

§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard, the Virginia Naval Militia and the Virginia State Defense Force, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard, the Virginia Naval Militia or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer

182 law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer
183 emergency medical technicians, members of volunteer search and rescue organizations, volunteer
184 members of community emergency response teams, and volunteer members of medical reserve corps are
185 deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the
186 minimum compensation provided by this title for injured workers or their dependents. For the purposes
187 of workers' compensation insurance premium calculations, the monthly payroll for each volunteer
188 firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.

189 4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition,
190 who respond to a hazardous materials incident *or search and rescue incident* at the request of the
191 Department of Emergency Management shall be based upon the earnings of such persons from their
192 primary employers.

193 "Award" means the grant or denial of benefits or other relief under this title or any rule adopted
194 pursuant thereto.

195 "Change in condition" means a change in physical condition of the employee as well as any change
196 in the conditions under which compensation was awarded, suspended, or terminated which would affect
197 the right to, amount of, or duration of compensation.

198 "Client company" means any person that enters into an agreement for professional employer services
199 with a professional employer organization.

200 "Coemployee" means an employee performing services pursuant to an agreement for professional
201 employer services between a client company and a professional employer organization.

202 "Commission" means the Virginia Workers' Compensation Commission as well as its former
203 designation as the Virginia Industrial Commission.

204 "Employee" means:

205 1. a. Every person, including aliens and minors, in the service of another under any contract of hire
206 or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose
207 employment is not in the usual course of the trade, business, occupation or profession of the employer
208 or (ii) as otherwise provided in subdivision 2 of this definition.

209 b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or
210 instruction outside of regular working hours and off the job, so long as the training or instruction is
211 related to his employment and is authorized by his employer.

212 c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid
213 or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of
214 their commander.

215 Income benefits for members of the National Guard or Naval Militia shall be terminated when they
216 are able to return to their customary civilian employment or self-employment. If they are neither
217 employed nor self-employed, those benefits shall terminate when they are able to return to their military
218 duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian
219 employment or self-employment remains unable to perform his military duties and thereby suffers loss
220 of military pay which he would otherwise have earned, he shall be entitled to one day of income
221 benefits for each unit training assembly or day of paid training which he is unable to attend.

222 d. Members of the Virginia State Defense Force.

223 e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on
224 duty or in training.

225 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
226 Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile
227 and domestic relations district courts and general district courts; and (iii) secretaries and administrative
228 assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and
229 compensated as provided in the general appropriation act, who shall be deemed employees of the
230 Commonwealth.

231 g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal
232 corporation or political subdivision of the Commonwealth.

233 h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including
234 president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the
235 charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability
236 company elected or appointed in accordance with the articles of organization or operating agreement of
237 the limited liability company.

238 i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
239 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth,
240 clerks of circuit courts and their deputies, officers and employees, and electoral board members
241 appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities,
242 counties and towns in which their services are employed and by whom their salaries are paid or in
243 which their compensation is earnable.

j. Members of the governing body of any county, city or town in the Commonwealth, whenever coverage under this title is extended to such members by resolution or ordinance duly adopted.

k. Volunteers, officers and employees of any commission or board of any authority created or controlled by a local governing body, or any local agency or public service corporation owned, operated or controlled by such local governing body, whenever coverage under this title is authorized by resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly.

r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.

s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program, who shall

305 be deemed employees of the Commonwealth for the purposes of this title.

306 2. "Employee" shall not mean:

307 a. Officers and employees of the Commonwealth who are elected by the General Assembly, or
308 appointed by the Governor, either with or without the confirmation of the Senate. This exception shall
309 not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of
310 the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation
311 Commission and the State Corporation Commission, or the Superintendent of State Police.

312 b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth
313 who are elected by the people or by the governing bodies, and who act in purely administrative
314 capacities and are to serve for a definite term of office.

315 c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated
316 with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is
317 derived from real estate commissions, (ii) the services of the salesperson or associated broker are
318 performed under a written contract specifying that the salesperson is an independent contractor, and (iii)
319 such contract includes a provision that the salesperson or associated broker will not be treated as an
320 employee for federal income tax purposes.

321 d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such
322 individual is excluded from taxation by the Federal Unemployment Tax Act.

323 e. Casual employees.

324 f. Domestic servants.

325 g. Farm and horticultural laborers, unless the employer regularly has in service more than two
326 full-time employees.

327 h. Employees of any person, firm or private corporation, including any public service corporation,
328 that has regularly in service less than three employees in the same business within this Commonwealth,
329 unless such employees and their employers voluntarily elect to be bound by this title. However, this
330 exemption shall not apply to the operators of underground coal mines or their employees. An executive
331 officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects
332 coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of
333 this subdivision.

334 i. Employees of any common carrier by railroad engaging in commerce between any of the several
335 states or territories or between the District of Columbia and any of the states or territories and any
336 foreign nation or nations, and any person suffering injury or death while he is employed by such carrier
337 in such commerce. This title shall not be construed to lessen the liability of any such common carrier or
338 to diminish or take away in any respect any right that any person so employed, or the personal
339 representative, kindred or relation, or dependent of such person, may have under the act of Congress
340 relating to the liability of common carriers by railroad to their employees in certain cases, approved
341 April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

342 j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce.
343 However, this title shall not be construed to lessen the liability of such common carriers or take away or
344 diminish any right that any employee or, in case of his death, the personal representative of such
345 employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

346 k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire-fighting,
347 lifesaving or rescue squad when engaged in activities related principally to participation as a member of
348 such squad whether or not the volunteer continues to receive compensation from his employer for time
349 away from the job.

350 l. Except as otherwise provided in this title, noncompensated employees and noncompensated
351 directors of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States
352 Code (Internal Revenue Code of 1954).

353 m. Any person performing services as a sports official for an entity sponsoring an interscholastic or
354 intercollegiate sports event or any person performing services as a sports official for a public entity or a
355 private, nonprofit organization which sponsors an amateur sports event. For the purposes of this
356 subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person
357 who is a neutral participant in a sports event. This shall not include any person, otherwise employed by
358 an organization or entity sponsoring a sports event, who performs services as a sports official as part of
359 his regular employment.

360 "Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any
361 individual, firm, association or corporation, or the receiver or trustee of the same, or the legal
362 representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire
363 company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an
364 employer under this title. If the employer is insured, it includes his insurer so far as applicable.

365 "Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer,
366 elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers

367 elected or appointed in accordance with the articles of organization or operating agreement of a limited
368 liability company. However, such term does not include noncompensated officers of corporations exempt
369 from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of
370 1954).

371 "Filed" means hand delivered to the Commission's office in Richmond or any regional office
372 maintained by the Commission; sent by telegraph, electronic mail or facsimile transmission; or posted at
373 any post office of the United States Postal Service by certified or registered mail. Filing by first-class
374 mail, telegraph, electronic mail or facsimile transmission shall be deemed completed only when the
375 application actually reaches a Commission office.

376 "Injury" means only injury by accident arising out of and in the course of the employment or
377 occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a
378 disease in any form, except when it results naturally and unavoidably from either of the foregoing
379 causes. Such term shall not include any injury, disease or condition resulting from an employee's
380 voluntary:

381 1. Participation in employer-sponsored off-duty recreational activities which are not part of the
382 employee's duties; or

383 2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by
384 § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from
385 work or (ii) any other nonwork activity.

386 Such term shall include any injury, disease or condition:

387 1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in
388 § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the
389 Department of Health or a local department of health; (d) a member of a search and rescue organization;
390 or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1
391 otherwise subject to the provisions of this title; and

392 2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives
393 thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b)
394 transmission of vaccinia in the course of employment from an employee participating in such
395 countermeasures to a coemployee of the same employer.

396 "Professional employer organization" means any person that enters into a written agreement with a
397 client company to provide professional employer services.

398 "Professional employer services" means services provided to a client company pursuant to a written
399 agreement with a professional employer organization whereby the professional employer organization
400 initially employs all or a majority of a client company's workforce and assumes responsibilities as an
401 employer for all coemployees that are assigned, allocated, or shared by the agreement between the
402 professional employer organization and the client company.

403 "Staffing service" means any person, other than a professional employer organization, that hires its
404 own employees and assigns them to a client to support or supplement the client's workforce. It includes
405 temporary staffing services that supply employees to clients in special work situations such as employee
406 absences, temporary skill shortages, seasonal workloads, and special assignments and projects.