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HOUSE BILL NO. 1031

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce)
(Patron Prior to Substitute—Delegate Hamilton)
House Amendments in [] — February 14, 1994

A BILL to amend and reenact § 65.2-101, as it is currently effective and as it may become effective, and § 65.2-402 of the Code of Virginia, relating to workers' compensation; occupational disease presumption.

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-101, as it is currently effective and as it may become effective, and § 65.2-402 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-101. (For effective date - See note) Definitions.

As used in this title:

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

"Average weekly wage" means:

A. 1. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; 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 fifty-two 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 fifty-two 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 fifty-two 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.

2. 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.

B. 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 and the Virginia State Defense Force, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, 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 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.

C. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, [~~and~~] auxiliary or reserve deputy sheriffs [, and volunteer emergency medical technicians] are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents.

D. The average weekly wage of persons, other than those covered in subdivision C of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Services shall be based upon the earnings of such persons from their primary employers.

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

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

"Employee" means:

A. 1. Every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision B

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60 of this definition.

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

64 3. Members of the Virginia National Guard, whether on duty in a paid or unpaid status or when
65 performing voluntary service to their unit in a nonduty status at the request of their commander.

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

73 4. Members of the Virginia State Defense Force.

74 5. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on
75 duty or in training.

76 6. Except as provided in subdivision B of this definition, all officers and employees of the
77 Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of juvenile and
78 domestic relations district courts and general district courts, who shall be deemed employees of the
79 Commonwealth.

80 7. Except as provided in subdivision B of this definition, all officers and employees of a municipal
81 corporation or political subdivision of the Commonwealth.

82 8. Except as provided in subdivision B of this definition, every executive officer, including president,
83 vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter
84 and bylaws of a corporation, municipal or otherwise.

85 9. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
86 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, and
87 clerks of circuit courts and their deputies, officers and employees, who shall be deemed employees of
88 the respective cities, counties and towns in which their services are employed and by whom their
89 salaries are paid or in which their compensation is earnable.

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

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

97 12. Except as provided in subdivision B of this definition, volunteer firefighters, volunteer lifesaving
98 or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police ~~and~~,
99 auxiliary or reserve deputy sheriffs *and volunteer emergency medical technicians*, who shall be deemed
100 employees of (i) the political subdivision or state institution of higher education in which the principal
101 office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement
102 chaplains, auxiliary or reserve police force ~~or~~, auxiliary or reserve deputy sheriff force *or volunteer*
103 *emergency medical technicians* is located if the governing body of such political subdivision or state
104 institution of higher education has adopted a resolution acknowledging such volunteer firefighters,
105 volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve
106 police ~~or~~, auxiliary or reserve deputy sheriffs *or volunteer emergency medical technicians* as employees
107 for the purposes of this title, or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue
108 squad members, the companies or squads for which volunteer services are provided whenever such
109 companies or squads elect to be included as an employer under this title.

110 13. Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement
111 chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs [, *volunteer emergency*
112 *medical technicians*] and any other persons who respond to a hazardous materials incident upon request
113 of the Department of Emergency Services pursuant to a plan or agreement developed under § 44-146.35
114 or § 44-146.36, who shall be deemed employees of the Department of Emergency Services for the
115 purposes of this title.

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

120 When any partner or proprietor is entitled to receive coverage under this title, such person shall be
121 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.

15. 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.

16. 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.

17. 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.

B. "Employee" shall not mean:

1. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee" as defined in § 51.1-101 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

4. Any taxicab driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.

5. Casual employees.

6. Domestic servants.

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

8. Employees of any person, firm or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees.

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

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

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

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay, and (ii) any volunteer fire

183 company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an
184 employer under this title. If the employer is insured, it includes his insurer so far as applicable.

185 "Executive officer" means the president, vice president, secretary, treasurer or other officer, elected or
186 appointed in accordance with the charter and bylaws of a corporation.

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

192 "Injury" means only injury by accident arising out of and in the course of the employment or
193 occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a
194 disease in any form, except when it results naturally and unavoidably from either of the foregoing
195 causes.

196 § 65.2-101. (Delayed effective date - See notes) Definitions.

197 As used in this title:

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

200 "Average weekly wage" means:

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

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

217 B. Whenever allowances of any character made to an employee in lieu of wages are a specified part
218 of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the
219 average weekly wage of the members of the Virginia National Guard and the Virginia State Defense
220 Force, registered members on duty or in training of the United States Civil Defense Corps of this
221 Commonwealth, and forest wardens shall be deemed to be such amount as will entitle them to the
222 maximum compensation payable under this title; however, any award entered under the provisions of
223 this title on behalf of members of the National Guard or their dependents, or registered members on
224 duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents,
225 shall be subject to credit for benefits paid them under existing or future federal law on account of injury
226 or occupational disease covered by the provisions of this title.

227 C. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members,
228 volunteer law-enforcement chaplains, auxiliary or reserve police, [~~and~~] auxiliary or reserve deputy
229 sheriffs [, and volunteer emergency medical technicians] are deemed employees under this title, their
230 average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this
231 title for injured workers or their dependents.

232 D. The average weekly wage of persons, other than those covered in subdivision C of this definition,
233 who respond to a hazardous materials incident at the request of the Department of Emergency Services
234 shall be based upon the earnings of such persons from their primary employers.

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

238 "Commission" means the Virginia Workers' Compensation Commission as well as its former
239 designation as the Virginia Industrial Commission.

240 "Employee" means:

241 A. 1. Every person, including a minor, in the service of another under any contract of hire or
242 apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the
243 trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision B
244 of this definition.

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

3. Members of the Virginia National Guard, whether on duty in a paid or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of their commander.

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

4. Members of the Virginia State Defense Force.

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

6. Except as provided in subdivision B of this definition, all officers and employees of the Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of family courts and general district courts, who shall be deemed employees of the Commonwealth.

7. Except as provided in subdivision B of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

8. Except as provided in subdivision B of this definition, every executive officer, including president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise.

9. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, and clerks of circuit courts and their deputies, officers and employees, who shall be deemed employees of the respective cities, counties and towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable.

10. 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.

11. 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.

12. Except as provided in subdivision B of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police ~~and~~, auxiliary or reserve deputy sheriffs *and volunteer emergency medical technicians*, 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 ~~or~~, auxiliary or reserve deputy sheriff force, *or volunteer emergency medical technicians* is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging such volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police ~~or~~, auxiliary or reserve deputy sheriffs *or volunteer emergency medical technicians* 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.

13. 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*] and any other persons who respond to a hazardous materials incident upon request of the Department of Emergency Services pursuant to a plan or agreement developed under § 44-146.35 or § 44-146.36, who shall be deemed employees of the Department of Emergency Services for the purposes of this title.

14. 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

306 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

319 17. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities,
320 whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter
321 3 of Title 53.1, or an act of assembly.

322 B. "Employee" shall not mean:

323 1. Officers and employees of the Commonwealth who are elected by the General Assembly, or
324 appointed by the Governor, either with or without the confirmation of the Senate. This exception shall
325 not apply to any "state employee" as defined in § 51.1-101 nor to Supreme Court Justices, judges of the
326 Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation
327 Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

337 4. Any taxicab driver, provided the Commission is furnished evidence that such individual is
338 excluded from taxation by the Federal Unemployment Tax Act.

339 5. Casual employees.

340 6. Domestic servants.

341 7. Farm and horticultural laborers, unless the employer regularly has in service more than two
342 full-time employees.

343 8. Employees of any person, firm or private corporation, including any public service corporation,
344 that has regularly in service less than three employees in the same business within this Commonwealth,
345 unless such employees and their employers voluntarily elect to be bound by this title. However, this
346 exemption shall not apply to the operators of underground coal mines or their employees.

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

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

359 11. Except as provided in subdivision A of this definition, a member of a volunteer fire-fighting,
360 lifesaving or rescue squad when engaged in activities related principally to participation as a member of
361 such squad whether or not the volunteer continues to receive compensation from his employer for time
362 away from the job.

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

"Executive officer" means the president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation.

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

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes.

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

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters *or volunteer or salaried emergency medical technicians* or (ii) any health condition or impairment of such firefighters *or emergency medical technicians* 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, ~~and~~ (v) city sergeants or deputy city sergeants of the City of Richmond, *and (vi) volunteer or salaried emergency medical technicians* 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. The presumptions described in subsections A and B of this section shall only apply if persons entitled to invoke them have, if requested by the 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 appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension or heart disease at the time of such examinations.

D. Persons making claims under this title who rely on such presumptions shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such 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.

E. 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 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.

F. 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.