

LD2975264

HOUSE BILL NO. 1031

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on February 11, 1994)

(Patron Prior to Substitute—Delegate Hamilton)

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 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 of this definition.

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

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

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

72 4. Members of the Virginia State Defense Force.

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

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

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

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

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

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

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

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

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

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

118 When any partner or proprietor is entitled to receive coverage under this title, such person shall be
119 subject to all provisions of this title as if he were an employee; however, the notices required under
120 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians
121 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 company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

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

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

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

194 § 65.2-101. (Delayed effective date - See notes) Definitions.

195 As used in this title:

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

198 "Average weekly wage" means:

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

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

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

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

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

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

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

237 "Employee" means:

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

242 2. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or
243 instruction outside of regular working hours and off the job, so long as the training or instruction is
244 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 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 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

306 insurance coverage of the independent contractor may be borne by the independent contractor.

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

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

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

315 17. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities,
316 whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter
317 3 of Title 53.1, or an act of assembly.

318 B. "Employee" shall not mean:

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

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

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

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

335 5. Casual employees.

336 6. Domestic servants.

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

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

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

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

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

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

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

366 "Filed" means hand delivered to the Commission's office in Richmond or any regional office
367 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 fire fighters *or volunteer or salaried emergency medical technicians* or (ii) any health condition or impairment of such fire fighters *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 fire fighters, (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.