

LD2929396

**HOUSE BILL NO. 1296**

Offered January 25, 1994

*A BILL to amend and reenact §§ 38.2-1904, 38.2-2005, and 65.2-101, as it is currently effective and as it may become effective, of the Code of Virginia, relating to workers' compensation insurance; volunteer firefighters; volunteer lifesaving and rescue squads.*

Patrons—Parrish, Brickley, Dudley, Hamilton, Hargrove, Ingram, Katzen, Marshall, Morgan, Rhodes, Rollison, Sherwood and Tata; Senator: Colgan

Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-1904, 38.2-2005, and 65.2-101, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-1904. Rate standards.

A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if relevant and actuarially sound; provided, other data, including countrywide, regional or other state data, may be considered where such data is relevant and where a sound actuarial basis exists for considering data other than Virginia-specific data.

1. No rate shall be held to be excessive unless it is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate applies.

2. No rate shall be held inadequate unless it is unreasonably low for the insurance provided and (i) continued use of it would endanger solvency of the insurer, or (ii) the rate is unreasonably low for the insurance provided and use of the rate by the insurer has or, if continued, will have the effect of destroying competition or creating a monopoly.

3. No rate shall be unfairly discriminatory if a different rate is charged for the same coverage and (i) the rate differential is based on sound actuarial principles or (ii) is related to actual or reasonably anticipated experience.

B. 1. In determining whether rates comply with the standards of subsection A of this section, separate consideration shall be given to (i) past and prospective loss experience within and outside this Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting profit and contingencies, (iv) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both countrywide and those specifically applicable to this Commonwealth, (vi) the loss reserving practices, standards and procedures utilized by the insurer, (vii) investment income earned or realized by insurers from their unearned premium and loss reserve and the Commission may give separate consideration to investment income earned on surplus funds, and (viii) all other relevant factors within and outside this Commonwealth. When actual experience or data does not exist, the Commission may consider estimates.

2. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

*3. In the case of workers' compensation insurance rates for volunteer firefighters or volunteer lifesaving or volunteer rescue squad members, the rates shall be calculated based upon the combined experience of both volunteer firefighters or volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid rescue squad members, so that the resulting rate is the same for both volunteer and paid members,*

C. For the classes of insurance to which this chapter applies, including insurance against contingent, consequential and indirect losses as defined in § 38.2-133 (i) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group for any class of insurance, or with respect to any subdivision or combination of insurance for which separate expense provisions are applicable, and (ii) risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards, expense provisions, or both. The standards may measure any difference between risks that can be demonstrated to have a probable effect upon losses or expenses. Notwithstanding any other provision of

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60 this subsection, except as permitted by § 38.2-1908, each member of a rate service organization shall use  
61 the uniform classification system, uniform experience rating plan, and uniform statistical plan of its  
62 designated rate service organization in the provision of insurance defined in § 38.2-119.

63 D. No insurer shall use any information pertaining to any motor vehicle conviction or accident to  
64 produce increased or surcharged rates above their filed manual rates for individual risks for a period  
65 longer than thirty-six months. This period shall begin no later than twelve months after the date of the  
66 conviction or accident.

67 E. Each authorized insurer subject to the provisions of this chapter may file with the Commission an  
68 expense reduction plan that permits variations in expense provisions. Such filing may contain provisions  
69 permitting agents to reduce their commission resulting in an appropriate reduction in premium. Nothing  
70 in this section shall be construed to require an agent to reduce a commission, nor may an insurer  
71 unreasonably refuse to reduce a premium due to a commission reduction as permitted by its filed  
72 expense reduction plan.

73 § 38.2-2005. Provisions governing making of rates.

74 A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate  
75 or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter  
76 applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if  
77 relevant and actuarially sound; provided, other data, including countrywide, regional or other state data,  
78 may be considered where such data is relevant and where a sound actuarial basis exists for considering  
79 data other than Virginia-specific data.

80 B. 1. In making rates for the classes of insurance to which this chapter applies, separate  
81 consideration shall be given to (i) past and prospective loss experience within and outside this  
82 Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting  
83 profit and contingencies, (iv) dividends, savings for unabsorbed premium deposits allowed or returned  
84 by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both  
85 countrywide and those specifically applicable to this Commonwealth, (vi) investment income earned or  
86 realized by insurers from their unearned premium and loss reserve and the Commission may give  
87 separate consideration to investment income earned on surplus funds, (vii) the loss reserving practices,  
88 standards and procedures utilized by the insurer, and (viii) all other relevant factors within and outside  
89 this Commonwealth. When actual experience or data does not exist, the Commission may consider  
90 estimates.

91 2. In the case of fire insurance rates, consideration shall be given to the experience of the fire  
92 insurance business during a period of not less than the most recent five-year period for which such  
93 experience is available.

94 3. In the case of uninsured motorist coverage required by subsection A of § 38.2-2206, consideration  
95 shall be given to all sums distributed by the Commission from the Uninsured Motorists Fund in  
96 accordance with the provisions of Chapter 30 of this title.

97 4. *In the case of workers' compensation rates for volunteer firefighters or volunteer lifesaving or*  
98 *volunteer rescue squad members written through the Virginia Workers' Compensation Insurance Plan,*  
99 *the rates shall be calculated based upon the combined experience of both volunteer firefighters or*  
100 *volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid*  
101 *rescue squad members, so that the resulting rate is the same for both volunteer and paid members,*

102 C. For the classes of insurance to which this chapter applies (i) the systems of expense provisions  
103 included in the rates for use by any insurer or group of insurers may differ from those of other insurers  
104 or groups of insurers to reflect the requirements of the operating methods of any such insurer or group  
105 for any class of insurance, or for any subdivision or combination of insurance for which separate  
106 expense provisions apply, and (ii) risks may be grouped by classifications for the establishment of rates  
107 and minimum premiums. Classification rates may be modified to produce rates for individual risks in  
108 accordance with rating plans that establish standards for measuring variations in hazards, expense  
109 provisions, or both. The standards may measure any difference among risks that can be demonstrated to  
110 have a probable effect upon losses or expenses.

111 D. All rates, rating schedules or rating plans and every manual of classifications, rules and rates,  
112 including every modification thereof, approved by the Commission under this chapter, shall be used until  
113 a change is approved by the Commission.

114 § 65.2-101. (For effective date - See note) Definitions.

115 As used in this title:

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

118 "Average weekly wage" means:

119 A. 1. The earnings of the injured employee in the employment in which he was working at the time  
120 of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided  
121 by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such

122 period, although not in the same week, then the earnings for the remainder of the fifty-two weeks shall  
 123 be divided by the number of weeks remaining after the time so lost has been deducted. When the  
 124 employment prior to the injury extended over a period of less than fifty-two weeks, the method of  
 125 dividing the earnings during that period by the number of weeks and parts thereof during which the  
 126 employee earned wages shall be followed, provided that results fair and just to both parties will be  
 127 thereby obtained. When, by reason of a shortness of time during which the employee has been in the  
 128 employment of his employer or the casual nature or terms of his employment, it is impractical to  
 129 compute the average weekly wages as above defined, regard shall be had to the average weekly amount  
 130 which during the fifty-two weeks previous to the injury was being earned by a person of the same grade  
 131 and character employed in the same class of employment in the same locality or community.

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

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

145 C. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members,  
 146 volunteer law-enforcement chaplains, auxiliary or reserve police, and auxiliary or reserve deputy sheriffs  
 147 are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce  
 148 the minimum compensation provided by this title for injured workers or their dependents. *For the*  
 149 *purposes of workers' compensation insurance premium calculations, the annual payroll for each*  
 150 *volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be*  
 151 *\$300.*

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

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

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

160 "Employee" means:

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

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

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

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

177 4. Members of the Virginia State Defense Force.

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

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

183 Commonwealth.

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

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

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

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

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

201 12. Except as provided in subdivision B of this definition, volunteer firefighters, volunteer lifesaving  
202 or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police and auxiliary  
203 or reserve deputy sheriffs, who shall be deemed employees of (i) the political subdivision or state  
204 institution of higher education in which the principal office of such volunteer fire company, volunteer  
205 lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force or  
206 auxiliary or reserve deputy sheriff force is located if the governing body of such political subdivision or  
207 state institution of higher education has adopted a resolution acknowledging such volunteer firefighters,  
208 volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve  
209 police or auxiliary or reserve deputy sheriffs as employees for the purposes of this title, or (ii) in the  
210 case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads  
211 for which volunteer services are provided whenever such companies or squads elect to be included as an  
212 employer under this title.

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

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

222 When any partner or proprietor is entitled to receive coverage under this title, such person shall be  
223 subject to all provisions of this title as if he were an employee; however, the notices required under  
224 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians  
225 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

238 17. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities,  
239 whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter  
240 3 of Title 53.1, or an act of assembly.

241 B. "Employee" shall not mean:

242 1. Officers and employees of the Commonwealth who are elected by the General Assembly, or  
243 appointed by the Governor, either with or without the confirmation of the Senate. This exception shall  
244 not apply to any "state employee" as defined in § 51.1-101 nor to Supreme Court Justices, judges of the

245 Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation  
246 Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

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

258 5. Casual employees.

259 6. Domestic servants.

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

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

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

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

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

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

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

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

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

298 § 65.2-101. (Delayed effective date - See notes) Definitions.

299 As used in this title:

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

302 "Average weekly wage" means:

303 A. 1. The earnings of the injured employee in the employment in which he was working at the time  
304 of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided  
305 by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such

306 period, although not in the same week, then the earnings for the remainder of the fifty-two weeks shall  
307 be divided by the number of weeks remaining after the time so lost has been deducted. When the  
308 employment prior to the injury extended over a period of less than fifty-two weeks, the method of  
309 dividing the earnings during that period by the number of weeks and parts thereof during which the  
310 employee earned wages shall be followed, provided that results fair and just to both parties will be  
311 thereby obtained. When, by reason of a shortness of time during which the employee has been in the  
312 employment of his employer or the casual nature or terms of his employment, it is impractical to  
313 compute the average weekly wages as above defined, regard shall be had to the average weekly amount  
314 which during the fifty-two weeks previous to the injury was being earned by a person of the same grade  
315 and character employed in the same class of employment in the same locality or community.

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

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

329 C. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members,  
330 volunteer law-enforcement chaplains, auxiliary or reserve police, and auxiliary or reserve deputy sheriffs  
331 are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce  
332 the minimum compensation provided by this title for injured workers or their dependents. *For the*  
333 *purposes of workers' compensation insurance premium calculations, the annual payroll for each*  
334 *volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be*  
335 *\$300.*

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

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

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

344 "Employee" means:

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

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

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

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

361 4. Members of the Virginia State Defense Force.

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

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

367 7. Except as provided in subdivision B of this definition, all officers and employees of a municipal

368 corporation or political subdivision of the Commonwealth.

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

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

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

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

384 12. Except as provided in subdivision B of this definition, volunteer firefighters, volunteer lifesaving  
385 or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police and auxiliary  
386 or reserve deputy sheriffs, who shall be deemed employees of (i) the political subdivision or state  
387 institution of higher education in which the principal office of such volunteer fire company, volunteer  
388 lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force or  
389 auxiliary or reserve deputy sheriff force is located if the governing body of such political subdivision or  
390 state institution of higher education has adopted a resolution acknowledging such volunteer firefighters,  
391 volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve  
392 police or auxiliary or reserve deputy sheriffs as employees for the purposes of this title, or (ii) in the  
393 case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads  
394 for which volunteer services are provided whenever such companies or squads elect to be included as an  
395 employer under this title.

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

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

405 When any partner or proprietor is entitled to receive coverage under this title, such person shall be  
406 subject to all provisions of this title as if he were an employee; however, the notices required under  
407 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians  
408 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

421 17. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities,  
422 whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter  
423 3 of Title 53.1, or an act of assembly.

424 B. "Employee" shall not mean:

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

429 Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

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

441 5. Casual employees.

442 6. Domestic servants.

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

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

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

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

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

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

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

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

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