

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 65.2-101 of the Code of Virginia, as it is currently effective and as it*
 3 *may become effective, relating to workers' compensation; definition of employee; members of*
 4 *volunteer search and rescue organizations.*

5 [H 1456]

6 Approved

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

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

10 § 65.2-101. Definitions.

11 As used in this title:

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

14 "Average weekly wage" means:

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

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

31 ~~B.~~ 2. Whenever allowances of any character made to an employee in lieu of wages are a specified
 32 part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the
 33 average weekly wage of the members of the Virginia National Guard and the Virginia State Defense
 34 Force, registered members on duty or in training of the United States Civil Defense Corps of this
 35 Commonwealth, and forest wardens shall be deemed to be such amount as will entitle them to the
 36 maximum compensation payable under this title; however, any award entered under the provisions of
 37 this title on behalf of members of the National Guard or their dependents, or registered members on
 38 duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents,
 39 shall be subject to credit for benefits paid them under existing or future federal law on account of injury
 40 or occupational disease covered by the provisions of this title.

41 ~~C.~~ 3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members,
 42 volunteer law-enforcement chaplains, auxiliary or reserve police, ~~and~~ auxiliary or reserve deputy sheriffs,
 43 *and members of volunteer search and rescue organizations* are deemed employees under this title, their
 44 average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this
 45 title for injured workers or their dependents.

46 ~~D.~~ 4. The average weekly wage of persons, other than those covered in subdivision ~~C~~ 3 of this
 47 definition, who respond to a hazardous materials incident at the request of the Department of Emergency
 48 Services shall be based upon the earnings of such persons from their primary employers.

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

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

54 "Employee" means:

55 ~~A.~~ 1. *a.* Every person, including a minor, in the service of another under any contract of hire or
 56 apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the

57 trade, business, occupation or profession of the employer or (ii) as otherwise provided in ~~subsection B~~
58 *subdivision 2* of this definition.

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

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

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

71 4. *d.* Members of the Virginia State Defense Force.

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

74 6. *f.* Except as provided in ~~subsection B~~ *subdivision 2* of this definition, all officers and employees
75 of the Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of juvenile
76 and domestic relations district courts and general district courts, who shall be deemed employees of the
77 Commonwealth.

78 7. *g.* Except as provided in ~~subsection B~~ *subdivision 2* of this definition, all officers and employees
79 of a municipal corporation or political subdivision of the Commonwealth.

80 8. *h.* Except as provided in ~~subsection B~~ *subdivision 2* of this definition, every executive officer,
81 including president, vice president, secretary, treasurer or other officer, elected or appointed in
82 accordance with the charter and bylaws of a corporation, municipal or otherwise.

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

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

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

95 12. *l.* Except as provided in ~~subsection B~~ *subdivision 2* of this definition, volunteer firefighters,
96 volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve
97 police ~~and~~, auxiliary or reserve deputy sheriffs ~~and members of volunteer search and rescue~~
98 *organizations*, who shall be deemed employees of (i) the political subdivision or state institution of
99 higher education in which the principal office of such volunteer fire company, volunteer lifesaving or
100 rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force ~~or~~, auxiliary or
101 reserve deputy sheriff force ~~or members of volunteer search and rescue organizations~~ is located if the
102 governing body of such political subdivision or state institution of higher education has adopted a
103 resolution acknowledging such volunteer firefighters, volunteer lifesaving or rescue squad members,
104 volunteer law-enforcement chaplains, auxiliary or reserve police ~~or~~, auxiliary or reserve deputy sheriffs
105 ~~or members of volunteer search and rescue organizations~~ as employees for the purposes of this title or
106 (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies
107 or squads for which volunteer services are provided whenever such companies or squads elect to be
108 included as an employer under this title.

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

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

118 employee responsibilities prescribed in this title.

119 When any partner or proprietor is entitled to receive coverage under this title, such person shall be
120 subject to all provisions of this title as if he were an employee; however, the notices required under
121 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians
122 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

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

138 ~~B.~~ 2. "Employee" shall not mean:

139 ~~1.~~ *a.* Officers and employees of the Commonwealth who are elected by the General Assembly, or
140 appointed by the Governor, either with or without the confirmation of the Senate. This exception shall
141 not apply to any "state employee" as defined in § ~~51.1-101~~ 51.1-124.3 nor to Supreme Court Justices,
142 judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers'
143 Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

153 ~~4.~~ *d.* Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such
154 individual is excluded from taxation by the Federal Unemployment Tax Act.

155 ~~5.~~ *e.* Casual employees.

156 ~~6.~~ *f.* Domestic servants.

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

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

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

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

178 ~~11.~~ *k.* Except as provided in ~~subsection A~~ *subdivision 1* of this definition, a member of a volunteer

179 fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as
 180 a member of such squad whether or not the volunteer continues to receive compensation from his
 181 employer for time away from the job.

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

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

190 "Executive officer" means the president, vice president, secretary, treasurer or other officer, elected or
 191 appointed in accordance with the charter and bylaws of a corporation. However, such term does not
 192 include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title
 193 26 of the United States Code (Internal Revenue Code of 1954).

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

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

203 § 65.2-101. (Delayed effective date) Definitions.

204 As used in this title:

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

207 "Average weekly wage" means:

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

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

224 ~~B.~~ 2. Whenever allowances of any character made to an employee in lieu of wages are a specified
 225 part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the
 226 average weekly wage of the members of the Virginia National Guard and the Virginia State Defense
 227 Force, registered members on duty or in training of the United States Civil Defense Corps of this
 228 Commonwealth, and forest wardens shall be deemed to be such amount as will entitle them to the
 229 maximum compensation payable under this title; however, any award entered under the provisions of
 230 this title on behalf of members of the National Guard or their dependents, or registered members on
 231 duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents,
 232 shall be subject to credit for benefits paid them under existing or future federal law on account of injury
 233 or occupational disease covered by the provisions of this title.

234 ~~C.~~ 3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members,
 235 volunteer law-enforcement chaplains, auxiliary or reserve police, ~~and~~ auxiliary or reserve deputy sheriffs,
 236 *and members of volunteer search and rescue organizations* are deemed employees under this title, their
 237 average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this
 238 title for injured workers or their dependents.

239 ~~D.~~ 4. The average weekly wage of persons, other than those covered in subdivision ~~C~~ 3 of this

240 definition, who respond to a hazardous materials incident at the request of the Department of Emergency
241 Services shall be based upon the earnings of such persons from their primary employers.

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

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

247 "Employee" means:

248 A. 1. a. Every person, including a minor, in the service of another under any contract of hire or
249 apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the
250 trade, business, occupation or profession of the employer or (ii) as otherwise provided in ~~subsection B~~
251 *subdivision 2* of this definition.

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

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

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

264 4. d. Members of the Virginia State Defense Force.

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

267 6. f. Except as provided in ~~subsection B subdivision 2~~ of this definition, all officers and employees
268 of the Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of family
269 courts and general district courts, who shall be deemed employees of the Commonwealth.

270 7. g. Except as provided in ~~subsection B subdivision 2~~ of this definition, all officers and employees
271 of a municipal corporation or political subdivision of the Commonwealth.

272 8. h. Except as provided in ~~subsection B subdivision 2~~ of this definition, every executive officer,
273 including president, vice president, secretary, treasurer or other officer, elected or appointed in
274 accordance with the charter and bylaws of a corporation, municipal or otherwise.

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

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

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

287 12. l. Except as provided in ~~subsection B subdivision 2~~ of this definition, volunteer firefighters,
288 volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve
289 police and, auxiliary or reserve deputy sheriffs and members of volunteer search and rescue
290 organizations, who shall be deemed employees of (i) the political subdivision or state institution of
291 higher education in which the principal office of such volunteer fire company, volunteer lifesaving or
292 rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force or, auxiliary or
293 reserve deputy sheriff force or members of volunteer search and rescue organizations is located if the
294 governing body of such political subdivision or state institution of higher education has adopted a
295 resolution acknowledging such volunteer firefighters, volunteer lifesaving or rescue squad members,
296 volunteer law-enforcement chaplains, auxiliary or reserve police or, auxiliary or reserve deputy sheriffs
297 or members of volunteer search and rescue organizations as employees for the purposes of this title or
298 (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies
299 or squads for which volunteer services are provided whenever such companies or squads elect to be
300 included as an employer under this title.

301 ~~13~~.m. Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer
 302 law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, *members of*
 303 *volunteer search and rescue organizations* and any other persons who respond to a ~~hazardous materials~~
 304 *an incident* upon request of the Department of Emergency Services pursuant to a ~~plan or agreement~~
 305 ~~developed under § 44-146.35 or § 44-146.36~~, who shall be deemed employees of the Department of
 306 Emergency Services for the purposes of this title.

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

311 When any partner or proprietor is entitled to receive coverage under this title, such person shall be
 312 subject to all provisions of this title as if he were an employee; however, the notices required under
 313 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians
 314 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

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

330 B. 2. "Employee" shall not mean:

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

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

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

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

347 5.e. Casual employees.

348 6.f. Domestic servants.

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

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

358 9.i. Employees of any common carrier by railroad engaging in commerce between any of the several
 359 states or territories or between the District of Columbia and any of the states or territories and any
 360 foreign nation or nations, and any person suffering injury or death while he is employed by such carrier
 361 in such commerce. This title shall not be construed to lessen the liability of any such common carrier or

362 to diminish or take away in any respect any right that any person so employed, or the personal
 363 representative, kindred or relation, or dependent of such person, may have under the act of Congress
 364 relating to the liability of common carriers by railroad to their employees in certain cases, approved
 365 April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

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

370 ~~11.~~*k.* Except as provided in ~~subsection A~~ *subdivision 1* of this definition, a member of a volunteer
 371 fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as
 372 a member of such squad whether or not the volunteer continues to receive compensation from his
 373 employer for time away from the job.

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

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

382 "Executive officer" means the president, vice president, secretary, treasurer or other officer, elected or
 383 appointed in accordance with the charter and bylaws of a corporation. However, such term does not
 384 include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title
 385 26 of the United States Code (Internal Revenue Code of 1954).

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

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