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HOUSE BILL NO. 1052

House Amendments in [] — February 1, 1996

A BILL to amend and reenact § 44-75.1:1 of the Code of Virginia, relating to the National Guard Mutual Assistance Counter-Drug Activities Compact.

Patron—Howell

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That § 44-75.1:1 of the Code of Virginia is amended and reenacted as follows:

§ 44-75.1:1. Compact enacted into law; terms.

The National Guard Mutual Assistance Counterdrug Activities Compact is hereby enacted into law and entered into by the Commonwealth of Virginia with all other states legally joining therein, in the form substantially as follows:

INTERSTATE COMPACT ON NATIONAL GUARD COUNTERDRUG OPERATIONS

ARTICLE I.

PURPOSE.

The purposes of this compact are to:

1. Provide for mutual assistance and support among the party states in the utilization of the National Guard in drug interdiction, counterdrug and demand reduction activities.

2. Permit the National Guard of this Commonwealth to enter into mutual assistance and support agreements, on the basis of need, with one or more law-enforcement agencies operating within this Commonwealth, for activities within this Commonwealth, or with a National Guard of one or more other states, whether said activities are within or without this Commonwealth in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counterdrug activities, and demand reduction.

3. Permit the National Guard of this Commonwealth to act as a requesting or a responding state as defined within this compact and to ensure the prompt and effective delivery of National Guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

4. Permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency.

5. Maximize the effectiveness of the National Guard in those situations which call for its utilization under this compact.

6. Provide protection for the rights of National Guard personnel when performing duty in other states in counterdrug activities.

7. Ensure uniformity of state laws in the area of National Guard involvement in interstate counterdrug activities by incorporating said uniform laws within the compact.

ARTICLE II.

ENTRY INTO FORCE AND WITHDRAWAL.

A. This compact shall enter into force when enacted by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

ARTICLE III.

MUTUAL ASSISTANCE AND SUPPORT.

A. As used in this article:

"Demand reduction" means providing available National Guard personnel, equipment, support and coordination to federal, state, local and civic organizations, institutions, and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

"Drug interdiction and counterdrug activities" means the use of National Guard personnel, while not in federal service, in any law-enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

1. Providing information obtained, during either the normal course of military training or operations or during counterdrug activities, to federal, state or local law-enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

2. Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the National Guard to any federal, state or local civilian law-enforcement official

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60 for law-enforcement purposes, in accordance with other applicable laws or regulations;

61 3. Providing available National Guard personnel to train federal, state or local civilian
62 law-enforcement personnel in the operation and maintenance of equipment, including equipment made
63 available above, in accordance with other applicable laws;

64 4. Providing available National Guard personnel to operate and maintain equipment provided to
65 federal, state or local law-enforcement officials pursuant to activities defined and referred to in this
66 compact;

67 5. Operating and maintaining equipment and facilities of the National Guard or other
68 law-enforcement agencies used for the purposes of drug interdiction and counterdrug activities;

69 6. Providing available National Guard personnel to operate equipment for the detection, monitoring
70 and communication of the movement of air, land and sea traffic; to facilitate communications in
71 connection with law-enforcement programs; to provide transportation for civilian law-enforcement
72 personnel; and to operate bases of operations for civilian law-enforcement personnel;

73 7. Providing available National Guard personnel, equipment and support for administrative,
74 interpretive, analytic or other purposes; and

75 8. Providing available National Guard personnel and equipment to aid federal, state and local
76 officials and agencies otherwise involved in the prosecution or incarceration of individuals processed
77 within the criminal justice system who have been arrested for criminal acts involving the use,
78 distribution or transportation of controlled substances as defined in 21 U.S.C. § 801 et seq. or otherwise
79 by law, in accordance with other applicable law.

80 "Law-enforcement agency" means a lawfully established federal, state, or local public agency that is
81 responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory,
82 game, immigration, postal, customs or controlled substances laws.

83 "Mutual assistance and support agreement" or "agreement" means an agreement between the National
84 Guard of this Commonwealth and one or more law-enforcement agencies or between the National Guard
85 of this Commonwealth and the National Guard of one or more other states, consistent with the purposes
86 of this compact.

87 "Official" means the appointed, elected, designated or otherwise duly selected representative of an
88 agency, institution or organization authorized to conduct those activities for which support is requested.

89 "Party state" refers to a state that has lawfully enacted this compact.

90 "Requesting state" means the party state whose governor requested assistance in the area of
91 counterdrug activities.

92 "Responding state" means the party state furnishing assistance, or requested to furnish assistance, in
93 the area of counterdrug activities.

94 "State" means each of the several states of the United States, the District of Columbia, the
95 Commonwealth of Puerto Rico or a territory or possession of the United States.

96 B. Upon the request of a governor of a party state for assistance in the area of drug interdiction,
97 counterdrug and demand reduction activities, the governor of a responding state shall have authority
98 under this compact to send without the borders of his state and place under the temporary operational
99 control of the appropriate National Guard or other military authority of the requesting state, for the
100 purposes of providing such requested assistance, all or any part of the National Guard forces of his state
101 as he may deem necessary, and the exercise of his discretion in this regard shall be conclusive.

102 C. The governor of a party state may, within his discretion, withhold the National Guard forces of
103 his state from such use and recall any forces or part or member thereof previously deployed in a
104 requesting state.

105 D. The National Guard of this Commonwealth is hereby authorized to engage in counterdrug
106 activities and demand reduction.

107 E. The Adjutant General of this Commonwealth, in order to further the purposes of this compact,
108 may enter into a mutual assistance and support agreement with one or more law-enforcement agencies of
109 this Commonwealth, including federal law-enforcement agencies operating within this Commonwealth,
110 or with the National Guard of one or more other party states to provide personnel, assets, and services
111 in the area of counterdrug activities and demand reduction, provided that all parties to the agreement are
112 not specifically prohibited by law to perform said activities.

113 The agreement shall set forth the powers, rights, and obligations of the parties to the agreement,
114 where applicable, as follows:

115 1. Its duration;

116 2. The organization, composition, and nature of any separate legal entity created thereby;

117 3. The purpose of the agreement;

118 4. The manner of financing the agreement and establishing and maintaining its budget;

119 5. The method to be employed in accomplishing the partial or complete termination of the agreement
120 and for disposing of property upon such partial or complete termination;

121 6. A provision for administering the agreement, which may include creation of a joint board

122 responsible for such administration;

123 7. The manner of acquiring, holding, and disposing of real and personal property used in this
124 agreement, if necessary;

125 8. The minimum standards for National Guard personnel implementing the provisions of this
126 agreement;

127 9. The minimum insurance required of each party to the agreement, as necessary;

128 10. The chain of command or delegation of authority to be followed by National Guard personnel
129 acting under the provisions of the agreement;

130 11. The duties and authority that the National Guard personnel of each party state may exercise; and

131 12. Any other necessary and proper matters.

132 Agreements prepared under the provisions of this compact are exempt from any general law
133 pertaining to intergovernmental agreements.

134 F. As a condition precedent to an agreement becoming effective under this article, the agreement
135 must be submitted to and receive the approval of the Office of the Attorney General of Virginia. The
136 Attorney General of Virginia may delegate his approval authority to the appropriate attorney for the
137 Virginia National Guard subject to those conditions which he decides are appropriate. Such delegation
138 must be in writing.

139 1. The Attorney General, or his agent for the Virginia National Guard as stated above, shall approve
140 an agreement submitted to him under this article unless he finds that it is not in proper form, does not
141 meet the requirements set forth in this article, or otherwise does not conform to the laws of Virginia. If
142 the Attorney General disapproves an agreement, he shall provide a written explanation to the Adjutant
143 General of the National Guard.

144 2. If the Attorney General, or his authorized agent, does not disapprove an agreement within thirty
145 days after its submission to him, it shall be considered approved by him.

146 G. Whenever National Guard forces of any party state are engaged in the performance of their duties,
147 in the area of drug interdiction, counterdrug and demand reduction activities, pursuant to orders, they
148 shall not be held personally liable for any acts or omissions which occur during the performance of their
149 duty.

150 ARTICLE IV.
151 RESPONSIBILITIES.

152 A. Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or
153 rights otherwise provided for National Guard personnel performing duty pursuant to Title 32 of the
154 United States Code nor shall anything in this compact be construed as a waiver of coverage provided for
155 under the Federal Tort Claims Act. In the event that National Guard personnel performing counterdrug
156 activities do not receive rights, benefits, privileges and immunities otherwise provided for National
157 Guard personnel as stated above, the following provisions shall apply:

158 1. Whenever National Guard forces of any responding state are engaged in another state in carrying
159 out the purposes of this compact, the members thereof so engaged shall have the same powers, duties,
160 rights, privileges and immunities as members of National Guard forces of the requesting state. The
161 requesting state shall save and hold members of the National Guard forces of responding states harmless
162 from civil liability, except as otherwise provided herein, for acts or omissions which occur in the
163 performance of their duties while engaged in carrying out the purposes of this compact, whether the
164 responding forces are serving the requesting state within the borders of the responding state or are
165 attached to the requesting state for purposes of operational control.

166 2. Subject to the provisions of subdivisions 3, 4, and 5 of this section, all liability that may arise
167 under the laws of the requesting state or the responding state, in connection with a request for assistance
168 or support, shall be assumed and borne by the requesting state.

169 3. Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by
170 the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment
171 answering a request for aid and for the cost of the materials, transportation and maintenance of National
172 Guard personnel and equipment incurred in connection with such request; however, nothing herein
173 contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

174 4. Unless there is a written agreement to the contrary, each party state shall provide, in the same
175 amounts and manner as if its National Guard units were on duty within their own state, for pay and
176 allowances of personnel of its National Guard units while engaged without the state pursuant to this
177 compact and while going to and returning from such duty pursuant to this compact.

178 5. Each party state providing for the payment of compensation and death benefits to injured members
179 and the representatives of deceased members of its National Guard forces, in case such members sustain
180 injuries or are killed within their own state, shall provide for the payment of compensation and death
181 benefits in the same manner and on the same terms in the event such members sustain injury or are
182 killed while rendering assistance or support pursuant to this compact. Such benefits and compensation

183 shall be deemed items of expense reimbursable pursuant to subdivision 3 of this section.

184 B. Officers and enlisted personnel of the National Guard performing duties subject to proper orders
185 pursuant to this compact shall be subject to and governed by the provisions of their home state code of
186 military justice whether they are performing duties within or without their home state. In the event that
187 any National Guard member commits, or is suspected of committing, a criminal offense while
188 performing duties pursuant to this compact without his home state, he may be returned immediately to
189 his home state and the home state shall be responsible for any disciplinary action to be taken. However,
190 nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense
191 occurred.

192 ARTICLE V.
193 DELEGATION.

194 Nothing in this compact shall be construed to prevent the governor of a party state from delegating
195 any of his responsibilities or authority respecting the National Guard, provided that such delegation is
196 otherwise in accordance with law. For purposes of this compact, however, the governor shall not
197 delegate the power to request assistance from another state.

198 ARTICLE VI.
199 LIMITATIONS.

200 Nothing in this compact shall:

201 1. Authorize or permit National Guard units or personnel to be placed under the operational control
202 of any person not having the National Guard rank or status required by law for the command in
203 question.

204 2. Deprive a properly convened court of jurisdiction over an offense or a defendant merely because
205 of the fact that the National Guard, while performing duties pursuant to this compact, was utilized in
206 achieving an arrest or indictment.

207 3. Authorize the National Guard to directly engage in ~~law-enforcement activities, including~~ the
208 *personal* apprehension, arrest and incarceration of any individual or the *physical* search and seizure of
209 any person ~~or property~~. *The National Guard may indirectly support any such law-enforcement activities*
210 *by an otherwise appropriate law-enforcement agency. [The National Guard may also, directly or*
211 *indirectly, engage in the legal search and seizure of any property when under the supervision of an*
212 *otherwise appropriate law-enforcement agency. The National Guard may engage in direct or indirect*
213 *legal searches and services of any property through the use of aerial surveillance, provided that*
214 *appropriate law-enforcement agents are present to provide supervision of such activity.]*

215 ARTICLE VII.
216 CONSTRUCTION AND SEVERABILITY.

217 This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of
218 this compact shall be severable, and, if any phrase, clause, sentence or provision of this compact is
219 declared to be contrary to the Constitution of the United States or of any state or the applicability
220 thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder
221 of this compact and the applicability thereof to any government, agency, person or the circumstance
222 shall not be affected thereby. If this compact shall be held contrary to the constitution of any state
223 participating herein, the compact shall remain in full force and effect as to the remaining party states
224 and in full force and effect as to the state affected as to all severable matters.