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HOUSE BILL NO. 209

House Amendments in [] — February 10, 1996

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 worker's compensation insurance; volunteer firefighters and volunteer lifesaving and rescue squads.

Patrons—Parrish, Barlow, Bloxom, Cooper, Davies, Ingram, Johnson, Katzen, Kilgore, Phillips, Ruff, Sherwood, Stump and Tate; Senators: Hanger, Lucas and Quayle

Referred to Committee on Corporations, Insurance and Banking

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, but in no event shall resulting premiums be less than forty dollars per year for any volunteer firefighter or rescue squad member.*

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

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60 demonstrated to have a probable effect upon losses or expenses. Notwithstanding any other provision of
61 this subsection, except as permitted by § 38.2-1908, each member of a rate service organization shall use
62 the uniform classification system, uniform experience rating plan, and uniform statistical plan of its
63 designated rate service organization in the provision of insurance defined in § 38.2-119.

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

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

74 § 38.2-2005. Provisions governing making of rates.

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

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

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

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

98 *In the case of workers' compensation insurance rates for volunteer firefighters or volunteer lifesaving*
99 *or volunteer rescue squad members written through the Virginia Worker's Compensation Insurance Plan,*
100 *the rates shall be calculated based upon the combined experience of both volunteer firefighters or*
101 *volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid*
102 *rescue squad members, so that the resulting rate is the same for both volunteer and paid members, but*
103 *in no event shall resulting premiums be less than forty dollars per year for any volunteer firefighter or*
104 *rescue squad member.*

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

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

117 § 65.2-101. Definitions.

118 As used in this title:

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

121 "Average weekly wage" means:

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

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

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

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians and members of volunteer search and rescue organizations are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. *For the purposes of workers' compensation insurance premium calculations, the [annual monthly] payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.*

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

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

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

"Employee" means:

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

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

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

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

d. Members of the Virginia State Defense Force.

e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on

183 duty or in training.

184 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
185 Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of juvenile and
186 domestic relations district courts and general district courts, who shall be deemed employees of the
187 Commonwealth.

188 g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal
189 corporation or political subdivision of the Commonwealth.

190 h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including
191 president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the
192 charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability
193 company elected or appointed in accordance with the articles of organization or operating agreement of
194 the limited liability company.

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

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

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

207 l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or
208 rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or
209 reserve deputy sheriffs, volunteer emergency medical technicians and members of volunteer search and
210 rescue organizations, who shall be deemed employees of (i) the political subdivision or state institution
211 of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or
212 rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve
213 deputy sheriff force, volunteer emergency medical technicians or members of volunteer search and
214 rescue organizations is located if the governing body of such political subdivision or state institution of
215 higher education has adopted a resolution acknowledging such volunteer firefighters, volunteer lifesaving
216 or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or
217 reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and
218 rescue organizations as employees for the purposes of this title or (ii) in the case of volunteer
219 firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which
220 volunteer services are provided whenever such companies or squads elect to be included as an employer
221 under this title.

222 m. Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement
223 chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical
224 technicians, members of volunteer search and rescue organizations and any other persons who respond to
225 an incident upon request of the Department of Emergency Services, who shall be deemed employees of
226 the Department of Emergency Services for the purposes of this title.

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

231 When any partner or proprietor is entitled to receive coverage under this title, such person shall be
232 subject to all provisions of this title as if he were an employee; however, the notices required under
233 §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians
234 required under § 65.2-603 shall be selected by the insurance carrier.

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

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

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

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

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

2. "Employee" shall not mean:

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

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

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

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

e. Casual employees.

f. Domestic servants.

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

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

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

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

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

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

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

"Executive officer" means (i) the president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt

306 from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of
307 1954).

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

313 "Injury" means only injury by accident arising out of and in the course of the employment or
314 occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a
315 disease in any form, except when it results naturally and unavoidably from either of the foregoing
316 causes. However, such term does not include any injury, disease or condition resulting from an
317 employee's voluntary participation in employer-sponsored off-duty recreational activities which are not
318 part of the employee's duties.

319 § 65.2-101. (Delayed effective date) Definitions.

320 As used in this title:

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

323 "Average weekly wage" means:

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

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

340 2. Whenever allowances of any character made to an employee in lieu of wages are a specified part
341 of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the
342 average weekly wage of the members of the Virginia National Guard and the Virginia State Defense
343 Force, registered members on duty or in training of the United States Civil Defense Corps of this
344 Commonwealth, and forest wardens shall be deemed to be such amount as will entitle them to the
345 maximum compensation payable under this title; however, any award entered under the provisions of
346 this title on behalf of members of the National Guard or their dependents, or registered members on
347 duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents,
348 shall be subject to credit for benefits paid them under existing or future federal law on account of injury
349 or occupational disease covered by the provisions of this title.

350 3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer
351 law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer
352 emergency medical technicians and members of volunteer search and rescue organizations are deemed
353 employees under this title, their average weekly wage shall be deemed sufficient to produce the
354 minimum compensation provided by this title for injured workers or their dependents. *For the purposes*
355 *of workers' compensation insurance premium calculations, the [annual monthly] payroll for each*
356 *volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be*
357 *\$300.*

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

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

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

366 "Employee" means:

367 1. a. Every person, including a minor, in the service of another under any contract of hire or

apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision 2 of this definition.

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

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

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

d. Members of the Virginia State Defense Force.

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

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

g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability company elected or appointed in accordance with the articles of organization or operating agreement of the limited liability company.

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

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

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

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians and members of volunteer search and rescue organizations, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians or members of volunteer search and rescue organizations is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging such volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians or members of volunteer search and rescue organizations as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Services, who shall be deemed employees of the Department of Emergency Services for the purposes of this title.

n. Any sole proprietor or all partners of a business electing to be included as an employee under the

workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

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

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

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

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

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

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

2. "Employee" shall not mean:

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

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

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

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

e. Casual employees.

f. Domestic servants.

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

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

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

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

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

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

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

"Executive officer" means (i) the president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

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

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. However, such term does not include any injury, disease or condition resulting from an employee's voluntary participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties.

ENGROSSED

HB209E