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SENATE BILL NO. 1050

Offered January 14, 2015

Prefiled January 12, 2015

A *BILL to amend and reenact §§ 2.2-2905, 8.01-327.2, 18.2-308, 44-1, 44-4, 44-80, 44-81, 44-82, 44-85, 44-93, 44-93.2, 44-93.3, 44-93.4, 44-94, 44-96 through 44-100, 44-104, 44-113, 44-114, 44-114.1, 44-115, 44-119, 44-129, 44-136, 44-137, 44-139, 46.2-827, 65.2-101, and 65.2-103 of the Code of Virginia and to repeal §§ 44-3, 44-7, 44-18, and 44-24.1, Articles 5 and 6 (§§ 44-55 through 44-74) of Chapter 1 of Title 44, §§ 44-123, 44-133, and 44-146.25, Chapter 4 (§§ 44-147 through 44-151) of Title 44, and §§ 44-205, 44-206 and 44-207 of the Code of Virginia and Chapters 216 and 319 of the Acts of Assembly of 1942 and Chapter 111 of the Acts of Assembly of 1944, relating to military and emergency laws.*

Patron—McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2905, 8.01-327.2, 18.2-308, 44-1, 44-4, 44-80, 44-81, 44-82, 44-85, 44-93, 44-93.2, 44-93.3, 44-93.4, 44-94, 44-96 through 44-100, 44-104, 44-113, 44-114, 44-114.1, 44-115, 44-119, 44-129, 44-136, 44-137, 44-139, 46.2-827, 65.2-101, and 65.2-103 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2905. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard ~~and the naval militia~~;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be

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59 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve
60 in this exempt capacity;

61 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the
62 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

63 22. Officers and employees of the Virginia Port Authority;

64 23. Employees of the Virginia College Savings Plan;

65 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental
66 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to
67 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure
68 (§ 2.2-3000 et seq.);

69 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as
70 state employees for purposes of participation in the Virginia Retirement System, health insurance, and
71 all other employee benefits offered by the Commonwealth to its classified employees;

72 26. Employees of the Virginia Indigent Defense Commission; and

73 27. Any chief of a campus police department that has been designated by the governing body of a
74 public institution of higher education as exempt, pursuant to § 23-232.

75 **§ 8.01-327.2. Who are privileged from arrest under civil process.**

76 In addition to the exemptions made by §§ 30-4, 30-6, 30-7, 30-8, 19.2-280, and 44-97, the following
77 persons shall not be arrested, apprehended, or detained under any civil process during the times
78 respectively herein set forth, but shall not otherwise be privileged from service of civil process by this
79 section:

80 1. The President of the United States, and the Governor of the Commonwealth at all times during
81 their terms of office;

82 2. The Lieutenant Governor of the Commonwealth during attendance at sessions of the General
83 Assembly and while going to and from such sessions;

84 3. Members of either house of the Congress of the United States during the session of Congress and
85 for fifteen days next before the beginning and after the ending of any session, and during any time that
86 they are serving on any committee or performing any other service under an order or request of either
87 house of Congress;

88 4. A judge, grand juror or witness, required by lawful authority to attend any court or place, during
89 such attendance and while going to and from such court or place;

90 5. Members of the ~~national guard or naval militia~~ *National Guard* while going to, attending at, or
91 returning from, any muster or court-martial;

92 6. Ministers of the gospel while engaged in performing religious services in a place where a
93 congregation is assembled and while going to and returning from such place; and

94 7. Voters going to, attending at, or returning from an election. Such privilege shall only be on the
95 days of such attendance.

96 **§ 18.2-308. Carrying concealed weapons; exceptions; penalty.**

97 A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver,
98 or other weapon designed or intended to propel a missile of any kind by action of an explosion of any
99 combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor,
100 slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more
101 rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun
102 chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration,
103 having at least two points or pointed blades which is designed to be thrown or propelled and which may
104 be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this
105 subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction
106 under this section subsequent to any conviction under any substantially similar ordinance of any county,
107 city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be
108 punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden
109 from common observation when it is observable but is of such deceptive appearance as to disguise the
110 weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun,
111 that a person had been issued, at the time of the offense, a valid concealed handgun permit.

112 B. This section shall not apply to any person while in his own place of abode or the curtilage
113 thereof.

114 C. Except as provided in subsection A of § 18.2-308.012, this section shall not apply to:

115 1. Any person while in his own place of business;

116 2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the
117 Commonwealth;

118 3. Any person who is at, or going to or from, an established shooting range, provided that the
119 weapons are unloaded and securely wrapped while being transported;

120 4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or

from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the Alcoholic Beverage Control Board, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States, ~~national guard, or naval militia~~ *or National Guard*, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and

5. Harbormaster of the City of Hopewell.

§ 44-1. Composition of militia.

The militia of the Commonwealth of Virginia shall consist of all able-bodied residents of the Commonwealth who are citizens of the United States and all other able-bodied persons resident in the Commonwealth who have declared their intention to become citizens of the United States, who are at least 16 years of age and, except as hereinafter provided, not more than 55 years of age. The militia shall be divided into ~~four~~ *three* classes: the National Guard, which includes the Army National Guard and the Air National Guard; the Virginia Defense Force; ~~the naval militia~~; and the unorganized militia.

§ 44-4. Composition of unorganized militia.

The unorganized militia shall consist of all able-bodied persons as set out in § 44-1, except such as may be included in §§ 44-2, 44-3, and 44-54.6; and except such as may be exempted as hereinafter provided.

§ 44-80. Order in which classes of militia called into service.

The National Guard, the Virginia Defense Force, ~~the naval militia~~, and the unorganized militia or any part thereof may be ordered into service by the Governor in such order as he determines.

§ 44-81. Length of service when called out.

The National Guard, the Virginia Defense Force, ~~the naval militia~~, or the unorganized militia, when called into service by the Governor, shall serve for such time as, in the Governor's judgment, may be necessary.

§ 44-82. How troops paid while in service; transportation to be furnished; movement of troops and supplies not to be delayed.

All officers and enlisted personnel of the National Guard; *or Virginia Defense Force*; ~~or naval militia~~, whenever called out in aid of the civil authorities, shall receive the compensation herein provided, and such compensation, and the necessary expenses incurred in furnishing supplies, subsistence, quartering, and transporting troops, shall be paid no later than 10 work days after the receipt of required payroll documentation by the Payroll Services Bureau of the Department of Accounts by the State Treasurer. Such payments shall be made on warrants to be drawn by the Comptroller, on the State Treasurer, upon certificates of the officer in actual command of the troops, and upon payrolls prepared according to such forms as the state regulations shall prescribe. Such payrolls and certificates are to be transmitted to the Adjutant General through the regular military channels, and he shall approve them before such warrants shall be drawn. The Comptroller and the State Treasurer are hereby authorized and directed to draw the

warrants and make the payments herein provided for in accordance with current or subsequently amended pay and allowances of United States armed forces.

The several transportation companies in this Commonwealth shall furnish transportation for troops so called out, stores, munitions and equipments, upon application of the officer in actual command, accompanied by a certificate from him of the number of personnel to be carried and their destination, and a copy of the order calling them out. For such transportation the transportation company shall be entitled to receive compensation from the Commonwealth.

Transportation of troops and military supplies shall be as speedy as possible and have the right-of-way over all passenger and freight traffic on transportation lines within the Commonwealth, and failure to furnish transportation when called upon, or unnecessary delay in transporting such troops and supplies, shall be punishable by a fine of not less than \$1,000 or more than \$10,000.

§ 44-85. Regulations and penalties.

Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the National Guard ~~or naval militia~~.

§ 44-93. Leaves of absence for employees of Commonwealth or political subdivisions.

A. All officers and employees of the Commonwealth or of any political subdivision of the Commonwealth who are former members of the armed services or members of the organized reserve forces of any of the armed services of the United States; *or* National Guard; ~~or naval militia~~ shall be entitled to leaves of absence from their respective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military duty, to include training duty, or when called forth by the Governor pursuant to the provisions of § 44-75.1 or § 44-78.1.

There shall be no loss of regular employer pay during such leaves of absence, except that paid leaves of absence for federally funded military duty, to include training duty, shall not exceed fifteen workdays per federal fiscal year, and except that no officers or employees shall receive paid leave for more than fifteen workdays per federally funded tour of active military duty.

When relieved from such duty, they shall be restored to positions held by them when ordered to duty. If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay, if the position exists, or in a comparable vacant position for which they are qualified, unless to do so would be unreasonable.

For the purposes of this section, with respect to employees of the Commonwealth or its political subdivisions who do not normally work approximately equal workdays on five or more days of each calendar week, the term "workday" shall mean 1/260 of the total working hours such employee would be scheduled to work during an entire federal fiscal year, not taking into account any state holidays, annual leave, military leave, or other absences. Where such employee returns from federally funded military duty and the eight-hour rest period required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. § 4301 et seq.) overlaps such employee's scheduled work shift, the employee shall receive paid military leave to the extent of such overlap.

B. In addition to the provisions of subsection A, any local government may pay such employee when activated for federally funded military duty all or any portion of the difference between his regular pay and the military pay received during all or any part of the term of active federally funded duty.

§ 44-93.2. Leaves of absence from nongovernmental employment.

A member of the Virginia National Guard; *or* Virginia Defense Force; ~~or naval militia~~ called to state active duty or military duty pursuant to Title 32 of the United States Code shall have the right to take leave without pay from his nongovernmental employment. No member of the National Guard; *or* Virginia Defense Force; ~~or naval militia~~ shall be forced to use or exhaust his vacation or other accrued leaves from his nongovernmental employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

§ 44-93.3. Reemployment rights.

Upon honorable release from state active duty or military duty pursuant to Title 32 of the United States Code, a member of the Virginia National Guard; *or* Virginia Defense Force ~~or naval militia~~ shall make written application to his previous employer for reemployment within (i) 14 days of his release from duty or from hospitalization following release if the length of the member's absence by reason of service in the uniformed services does not exceed 180 days or (ii) 90 days of his release from duty or from hospitalization following release if the length of the member's absence by reason of service in the uniformed services exceeds 180 days. When released from such duty, they shall be restored to positions held by them when ordered to duty. If the office or position has been abolished or otherwise has ceased to exist during such leave of absence, they shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified, unless to do so would be unreasonable. This section shall not apply when the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the

305 uniformed services exceeds five years.

306 **§ 44-93.4. Discrimination against persons who serve in the Virginia National Guard or Virginia**
307 **Defense Force and acts of reprisal prohibited.**

308 A. A member of the Virginia National Guard; *or* Virginia Defense Force; ~~or naval militia~~ who
309 performs, has performed, applies to perform, or has an obligation to perform state active duty or military
310 duty pursuant to Title 32 of the United States Code shall not be denied initial employment,
311 reemployment, retention in employment, promotion, or any benefit of employment by an employer on
312 the basis of that membership, application for membership, performance of service, application for
313 service, or obligation.

314 B. A person shall be considered to have denied a member of the Virginia National Guard; *or*
315 Virginia Defense Force; ~~or naval militia~~ initial employment, reemployment, retention in employment,
316 promotion, or a benefit of employment in violation of this section if the member's membership,
317 application for membership, performance of service, application for service, or obligation for service is a
318 motivating factor in that person's action, unless the person can prove by the greater weight of the
319 evidence that the same unfavorable action would have taken place in the absence of the member's
320 membership, application for membership, performance of service, application for service, or obligation
321 for service.

322 **§ 44-94. Exemption from jury duty.**

323 The active officers and members of the National Guard ~~and naval militia~~ shall be exempt from
324 serving on juries in civil and criminal cases upon presentation to the clerk of the court of a certificate of
325 such membership signed by the commanding officer of the unit of which the person summoned for jury
326 service is a member.

327 **§ 44-96. Military property exempt from levy and sale.**

328 The uniforms, arms, and equipment required by law or regulations of every commissioned and
329 warrant officer and every enlisted person of the Virginia National Guard; *and* Virginia Defense Force;
330 ~~and naval militia~~ shall be exempt from sale under any execution, distress, or other process for debt and
331 taxes.

332 **§ 44-97. Exemption from arrest.**

333 No person belonging to the Virginia National Guard; *or* Virginia State Defense Force ~~or the naval~~
334 ~~militia~~ shall be arrested on any process issued by or from any civil officer or court, except in cases of
335 felony or breach of the peace, while going to, remaining at or returning from any place at which he may
336 be required to attend for military duty; nor in any case whatsoever while actually engaged in the
337 performance of his military duties, except with the consent of his commanding officer.

338 **§ 44-97.1. Continuance or time for filing pleading, etc., where party or attorney is on active**
339 **duty.**

340 Any party to or attorney in an action or proceeding in any court, including the Supreme Court of
341 Virginia, commission, or other tribunal having judicial or quasi-judicial powers or jurisdiction who has
342 been ordered to participate in state active duty, annual active duty for training, or temporary active duty
343 in the reserve forces of any of the armed services of the United States; *or* National Guard; ~~or naval~~
344 ~~militia~~ shall be entitled to a continuance, not to exceed three weeks, as a matter of right during the
345 period of such duty, provided the continuance is requested at least four days prior to the first day for
346 which the continuance is sought. The period required by any statute or rule for the filing of any
347 pleading or the performance of any act relating thereto shall be extended for seven days after such
348 active duty, provided a request is made four days prior to the date the pleading or act is due. The failure
349 of any court, commission, or other tribunal to allow such continuance when requested to do so or the
350 returning of such filing or act during the period hereinabove specified shall constitute reversible error.
351 This section shall not prevent the granting of temporary injunctive relief or the dissolution or extension
352 of a temporary injunction, but the right to such relief shall remain in the sound discretion of the court or
353 other such tribunal.

354 **§ 44-98. Interference with employment of members of Virginia National Guard or Virginia**
355 **Defense Force.**

356 A person; who, either by himself; or with another, deprives a member of the Virginia National
357 Guard; *or* Virginia Defense Force ~~or naval militia~~ of his employment, or prevents, by himself or
358 another, such member being employed, or obstructs or annoys such member or his employer at his
359 trade, business, or employment, because such member of such organization is such member, *or*
360 dissuades any person from enlistment in the Virginia National Guard; *or* Virginia Defense Force ~~or~~
361 ~~naval militia~~ by threat or injury to him in his ~~employment~~, trade ~~or~~, business, *or employment* in case he
362 shall so enlist, shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not
363 exceeding \$500, or imprisonment in jail not more than 30 days, or shall suffer both fine and
364 imprisonment.

365 **§ 44-99. Organizations may own property; suits.**

366 Companies or other organizations of the Virginia National Guard; *and* Virginia Defense Force ~~and~~

naval militia shall have the right to own and keep real and personal property necessary for their use, which shall belong to and be under control of the active members of the unit; and the commanding officer of any unit shall have the right and power to maintain any suit, in his own name, to recover for the use of the unit any debts or effects belonging to the unit, or damages for the injury thereof; and no suit pending in his name shall be abated by his ceasing to be the commanding officer of the unit; but upon motion of the commander succeeding him, such commander shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally instituted by him. Armories owned by such units shall be exempt from all state, county and municipal taxation.

§ 44-100. No action allowed on account of military duties; counsel for members sued or prosecuted.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any member of the Virginia National Guard, *or* Virginia Defense Force, ~~or naval militia~~ be liable to civil action or suit or criminal prosecution for any act done while in the discharge of his military duty.

If any member of the Virginia National Guard, *or* Virginia Defense Force, ~~or naval militia~~ is sued civilly or arrested, indicted, or otherwise prosecuted for any act committed in the discharge of his official duty while on state duty, the Adjutant General may employ special counsel approved by the Attorney General to defend such member. The compensation for special counsel employed pursuant to this section shall, subject to the approval by the Attorney General, be paid out of the funds appropriated for the administration of the Department of Military Affairs.

§ 44-104. Care required and liability of officers.

All commissioned officers of the Virginia National Guard, *and* Virginia Defense Force ~~and naval militia~~ shall exercise the strictest care and vigilance for the preservation of the uniforms, arms, supplies, equipment and military property furnished to their several commands under the provisions of this chapter. Any officer receiving public property for military use shall be responsible for the articles so received by him; and he shall not transfer such property, or any portion thereof, to another, either as a loan or permanently, without the authority of the Adjutant General, or his duly authorized representative.

§ 44-113. County, city and town appropriations.

Counties, cities, and towns may appropriate such sums of money and real and personal property as they may deem proper to the various organizations of the National Guard, *or* the Virginia Defense Force, ~~or naval militia~~, when such organizations are maintained within the limits of the counties, cities, and towns respectively; and counties may appropriate such sums of money and real and personal property as they may deem proper to the various organizations of the National Guard if such organizations are maintained in any incorporated town or city of the second class located within the geographical limits of such counties respectively.

§ 44-114. Allowances made to organizations from state appropriations.

For the necessary expenses of the maintenance of the National Guard, ~~the naval militia~~ and the Virginia State Defense Force, to include the providing of one flag of the Commonwealth of Virginia to the next of kin of any individual, upon his death, who was serving in, or honorably served for a period of 20 years in and retired from, the Virginia National Guard, the Virginia State Defense Force, or a combination of both, the Adjutant General shall annually allot to each organization or unit such amounts as may in his judgment be advisable, and as may be available from the appropriation to the Department of Military Affairs, such allotment to be based upon such scheme of distribution as may appear equitable to the Adjutant General and best suited to the needs of the military forces of the Commonwealth.

§ 44-114.1. Orders transmitted to and through the Governor.

All orders from the federal government or any of its officers, agencies, or departments to the state militia of Virginia, including the National Guard, ~~the naval militia~~, and the unorganized militia ~~which, that~~ relate to the call, induction, *or* drafting of Virginia state troops of any type or description, into the federal service for active duty or otherwise and withdrawing them from the control of the Governor of Virginia shall be first transmitted to and through the Governor of Virginia. The Governor, as commander in chief of the state militia, shall not approve, consent to, or concur in any such order ~~which that~~ has not been transmitted as herein required.

§ 44-115. Custom and usage of United States army, air force and navy; applicability of § 44-40 and Article 4 of this chapter.

All matters relating to the organization, discipline and government of the Virginia National Guard, not otherwise provided for by law or by regulations, shall be decided by the custom and usage of the United States army, air force or navy, as appropriate. In addition, all members of the Virginia Defense Force, ~~the naval militia~~, and the unorganized militia on state active duty shall be subject to military

discipline. Infractions of military discipline shall be punishable under the provisions of § 44-40 and Article 4 (§ 44-42 et seq.) of this chapter.

§ 44-119. Retired list of officers, warrant officers and enlisted persons.

There shall be a retired list of officers, warrant officers and enlisted persons of the Virginia National Guard.

The following persons, upon their written applications through regular military channels to the Adjutant General, may be placed on the retired list of the Virginia National Guard:

1. Former Adjutant Generals who have resigned or been relieved;

2. Officers or enlisted persons in the guard who have been honorably discharged and have served for at least ten years in active service of the guard, or ten years computing the period served in the Virginia National Guard and the period of active service in the United States armed forces.

Officers who have served honorably and efficiently in the Virginia National Guard or the Virginia militia shall be commissioned on the retired list of the Virginia militia, unorganized, in their respective grade, or the highest grade held by them in the military service of the Commonwealth, except that officers who have to their credit fifteen years or more of exemplary service may, at the discretion of the Adjutant General, be retired with commission of the next higher grade to the highest grade held by them in the military service of the Commonwealth of Virginia.

Warrant officers and noncommissioned officers shall be placed on the retired list with the highest rank held by them in the Virginia National Guard.

Reentry into the active military service of the Commonwealth or of the United States shall discharge officers, warrant officers and enlisted persons from the retired list, and for any future retirement new application shall be made.

~~All officers, warrant officers and enlisted personnel heretofore placed on the retired list by virtue of the provisions of an act approved March 3, 1892, as amended, shall be transferred to and borne upon the retired list of the Virginia militia, unorganized.~~

§ 44-129. Joint use of public buildings for armories.

The governing body of any county, city or incorporated town, wherein a unit or units of the Virginia National Guard and naval militia of Virginia have been, or may hereafter be established, may either severally, or acting jointly with each other, or with the Adjutant General, construct or acquire by purchase, contract, lease, gift, donation or condemnation, grounds and/or buildings which shall be suitable for public assemblages, conventions, exhibitions and entertainments; provided, that such buildings, or the plans and specifications therefor, are first approved by the Adjutant General as suitable for use as armories by such National Guard units; provided further, that such governing bodies or either of them, shall have contracted with the Adjutant General for the use of such buildings as an armory by such National Guard unit or units upon terms not inconsistent with this chapter.

§ 44-136. Sale or lease of armories.

When the Adjutant General shall receive information from the Governor of the disbandment of an organization of the National Guard or naval militia occupying or using an armory provided by the Commonwealth under the direction of the Adjutant General, he shall determine whether such armory shall be sold or not, and if it is determined that such armory be sold after due publication as prescribed by the laws of the Commonwealth for the sale of real estate under a deed of trust, it shall be sold at public auction for the highest price to be paid for same, and upon such terms and conditions as may seem best to the Adjutant General. The proceeds of such sale shall be divided between the Commonwealth, county, city or individual, as their interest may appear.

In case an armory becomes vacant by any reason mentioned in this section, the Adjutant General may lease such armory for a period not to exceed one year, or, when duly authorized by the Governor, may lease the same for a period of years, the proceeds due the Commonwealth therefrom in either case to be turned into the state treasury to be credited to the Armory Fund. Should there be other owner or owners than the Commonwealth then the balance of the proceeds shall be equitably turned over to them as their interest may appear. During the time that the troops quartered in an armory are absent from their home station, in federal service, the armory may be leased as above provided, but not sold.

§ 44-137. City and county aid.

Every city and county in the Commonwealth having an active National Guard, or Virginia Defense Force, or naval militia organization or organizations is authorized to render such financial assistance as it may deem wise and patriotic to such organization or organizations, either by donating land or buildings, or donating the use of land or buildings, or by contributing to their equipment and maintenance.

§ 44-139. Reversions of donations.

In the event that any real property is donated to a National Guard or naval militia organization under the provisions of this chapter, and the organization shall fail to accept such property, or shall, after accepting it, be disbanded, the title to the property thus donated shall revert to the person, county or municipality donating the same as their interest may appear.

§ 46.2-827. Right-of-way of United States forces, troops, National Guard, etc.

United States forces or troops, or any portion of the Virginia ~~national guard or naval militia~~ *National Guard*, parading or performing any duty according to law, or any civil defense personnel performing any duty according to law, shall have the right-of-way in any highway through which they may pass. Such passage, however, shall not interfere with the carrying of the United States mails and the legitimate functions of police and fire fighters or with the passage of emergency vehicles as defined in § 46.2-920.

§ 65.2-101. Definitions.

As used in this title:

"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 52 weeks immediately preceding the date of the injury, divided by 52; 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 52 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 52 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 52 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, ~~the Virginia Naval Militia~~ and the Virginia Defense Force, registered members on duty or in training of the United States Civil Defense Corps of ~~this the~~ Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, 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, ~~the Virginia Naval Militia~~ or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of ~~this the~~ 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, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps 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 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 Management shall be based upon the earnings of such persons from their primary employers.

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

"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.

"Client company" means any person that enters into an agreement for professional employer services with a professional employer organization.

"Coemployee" means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

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

"Employee" means:

551 1. a. Every person, including aliens and minors, in the service of another under any contract of hire
552 or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose
553 employment is not in the usual course of the trade, business, occupation or profession of the employer
554 or (ii) as otherwise provided in subdivision 2 of this definition.

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

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

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

568 d. Members of the Virginia Defense Force.

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

571 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
572 Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile
573 and domestic relations district courts and general district courts; and (iii) secretaries and administrative
574 assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and
575 compensated as provided in the general appropriation act, who shall be deemed employees of the
576 Commonwealth.

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

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

584 i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
585 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth,
586 clerks of circuit courts and their deputies, officers and employees, and electoral board members
587 appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities,
588 counties and towns in which their services are employed and by whom their salaries are paid or in
589 which their compensation is earnable. However, notwithstanding the foregoing provision of this
590 subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or
591 town in which their services are employed and by whom their salaries are paid or in which their
592 compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid
593 outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the
594 Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.

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

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

602 l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or
603 rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or
604 reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and
605 rescue organizations, volunteer members of regional hazardous materials emergency response teams,
606 volunteer members of community emergency response teams, and volunteer members of medical reserve
607 corps, who shall be deemed employees of (i) the political subdivision or state institution of higher
608 education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue
609 squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy
610 sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization,
611 regional hazardous materials emergency response team, community emergency response team, or medical
612 reserve corps is located if the governing body of such political subdivision or state institution of higher

education has adopted a resolution acknowledging those persons 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. (1) 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 Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a limited liability company having only one member, 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, shareholder or member 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 sole shareholder, member 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.

r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.

s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

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 three 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).
- m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.
- n. Any person who suffers an injury on or after July 1, 2012, for which there is jurisdiction under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq. However, this title shall not be construed to eliminate or diminish any right that any person or, in the case of the person's death, his personal representative, may have under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq.

"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 means of electronic transmission approved by the Commission; sent by facsimile transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, electronic transmission, or facsimile transmission shall be deemed completed only when the document or other material transmitted reaches the Commission or its designated agent.

"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. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or

2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and

2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

"Professional employer organization" means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

"Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

§ 65.2-103. Coverage of members of the Virginia National Guard or Virginia Defense Force during response to orders.

A claim for workers' compensation benefits shall be deemed to be in the course of employment with the Virginia National Guard, or Virginia Defense Force, ~~or naval militia~~ for any member thereof who, reacting to an order to report received while he is outside an assigned shift or work location, undertakes in direct obedience to a lawful military order travel by the most expeditious route to his designated place of state active duty pursuant to §§ 44-54.4, 44-75.1, and 44-78.1. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

2. That §§ 44-3, 44-7, 44-18, and 44-24.1, Articles 5 and 6 (§§ 44-55 through 44-74) of Chapter 1 of Title 44, §§ 44-123, 44-133, and 44-146.25, Chapter 4 (§§ 44-147 through 44-151) of Title 44, and §§ 44-205, 44-206 and 44-207 of the Code of Virginia and Chapters 216 and 319 of the Acts of Assembly of 1942 and Chapter 111 of the Acts of Assembly of 1944 are repealed.