

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 44-75.1:1 of the Code of Virginia, relating to the National Guard Mutual Assistance Counterdrug Activities Compact.

[S 183]

Approved

Be it enacted by the General Assembly of Virginia:

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

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

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

INTERSTATE COMPACT ON NATIONAL GUARD COUNTERDRUG OPERATIONS

ARTICLE I.

PURPOSE.

The purposes of this compact are to:

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

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

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

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

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

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

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

ARTICLE II.

ENTRY INTO FORCE AND WITHDRAWAL.

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

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

ARTICLE III.

MUTUAL ASSISTANCE AND SUPPORT.

A. As used in this article:

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

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

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

2. Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the National Guard to any federal, state or local civilian law-enforcement official for law-enforcement purposes, in accordance with other applicable laws or regulations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Its duration;
2. The organization, composition, and nature of any separate legal entity created thereby;
3. The purpose of the agreement;
4. The manner of financing the agreement and establishing and maintaining its budget;
5. The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
6. A provision for administering the agreement, which may include creation of a joint board

118 responsible for such administration;

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

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

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

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

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

127 12. Any other necessary and proper matters.

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

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

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

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

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

146 ARTICLE IV. 147 RESPONSIBILITIES.

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

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

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

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

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

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

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

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

ARTICLE V. DELEGATION.

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

ARTICLE VI. LIMITATIONS.

Nothing in this compact shall:

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

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

3. Authorize the National Guard to directly engage in ~~law-enforcement activities, including~~ the *personal* apprehension, arrest and incarceration of any individual or the *physical* search and seizure of any person ~~or property~~. *The National Guard may indirectly support any such law-enforcement activities by an otherwise appropriate law-enforcement agency. The National Guard may engage in direct or indirect legal searches and seizures of any property through the use of aerial surveillance, provided that appropriate law-enforcement agents are present to provide supervision of such activity.*

ARTICLE VII. CONSTRUCTION AND SEVERABILITY.

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