CODE OF VIRGINIA

Title 65.2

Workers' Compensation

Title 65.2 - WORKERS' COMPENSATION

Chapter 1 - DEFINITIONS AND GENERAL PROVISIONS

§ 65.2-100. Short title.

This title shall be known as the Virginia Workers' Compensation Act.

Code 1950, § 65-1; 1968, c. 660, § 65.1-1; 1983, c. 239; 1991, c. 355.

§ 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 and the Virginia Defense Force, registered members on duty or in training of the United States Civil Defense Corps of 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 or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of 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 emergency medical services personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, 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 who is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 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:

1. a. Every person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, 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 Defense Force.

e. Registered members of the United States Civil Defense Corps of the 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 (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts; and (iii) secretaries and administrative assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and compensated as provided in the general appropriation act, 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, clerks of circuit courts and their deputies, officers and employees, and electoral board members appointed in accordance with § 24.2-106, 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. However, notwithstanding the foregoing provision of this subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or town in which their services are employed and by whom their salaries are paid or in which their compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.

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 emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or public institution of higher education in which the principal office of such volunteer fire company, volunteer emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or public 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 emergency medical services personnel, the fire companies or emergency medical services agencies 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 emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, 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 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 Education and Work, 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 department or volunteer emergency medical services agency when engaged in activities related principally to participation as an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or a member of such fire department 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 (i) corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954) or (ii) property owners' associations as defined in § 55.1-1800.

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.

o. An owner-operator of a motor vehicle that is leased with or to a common or contract carrier in the trucking industry if (i) the owner-operator performs services for the carrier pursuant to a contract that provides that the owner-operator is an independent contractor and shall not be treated as an employee for purposes of the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq., Social Security Act of 1935, P.L. 74-271, federal unemployment tax laws, and federal income tax laws and (ii) each of the following factors is present:

(1) The owner-operator is responsible for the maintenance of the vehicle;

(2) The owner-operator bears the principal burden of the vehicle's operating costs;

(3) The owner-operator is the driver;

(4) The owner-operator's compensation is based on factors related to the work performed and not on the basis of hours or time expended; and

(5) The owner-operator determines the method and means of performing the service.

"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 emergency medical services agency 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, "executive officer" does not include (a) 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) or (b) noncompensated officers of a property owners' association as such term is defined in § 55.1-1800.

"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.) 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.

Code 1950, §§ 65-2 through 65-7.1, 65-24, 65-25; 1952, c. 551; 1954, c. 246; 1956, cc. 283, 479; 1956, Ex. Sess., c. 53; 1958, c. 187; 1960, c. 149; 1962, c. 530; 1964, c. 603; 1966, c. 200; 1968, c. 660, §§ 65.1-2, 65.1-3, 65.1-4, 65.1-5 through 65.1-8, 65.1-27, 65.1-28; 1970, c. 470; 1971, Ex. Sess., c. 7; 1972, cc. 464, 619; 1973, cc. 297, 542; 1975, c. 330, § 65.1-4.1; 1976, c. 187; 1977, c. 326; 1978, cc. 41, 841; 1979, c. 80, § 65.1-2.1; 1980, c. 421, § 65.1-4.2; 1983, c. 346; 1984, cc. 388, 694, 703, § 65.1-4.3; 1987, cc. 213, 308, § 65.1-4.4; 1988, c. 360; 1989, cc. 312, 319, 437, §§ 65.1-4.5, 65.1-4.6; 1990, c. 838, § 65.1-4.1:1; 1991, cc. 277, 354, 355; 1992, c. 12; 1993, c. 280; 1994, cc. 271, 286, 526; 1995, cc. 4, 168, 272, 288; 1996, cc. 250, 721; 1998, c. 52; 1999, c. 1006; 2000, cc. 301, 624, 718, 1018; 2002, c. 69; 2003, c. 999; 2004, cc. 888, 928; 2005, cc. 354, 368, 374, 472; 2006, c. 629; 2007, c. 475; 2010, cc. 158, 278; 2011, cc. 572, 586, 665; 2012, c. 654; 2014, c. 209; 2015, cc. 13, 221, 442, 447, 502, 503; 2019, c. 210.

§ 65.2-101.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this title the Commission is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Commission may be sent by regular mail.

2011, c. 566.

§ 65.2-102. Coverage of firefighters and law-enforcement officers in off-duty capacity.

A. Notwithstanding any other provision of law, a claim for workers' compensation benefits shall be deemed to be in the course of employment of any firefighter or law-enforcement officer who, in an off-duty capacity or outside an assigned shift or work location, undertakes any law-enforcement or rescue activity. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

B. For purposes of this section:

"Firefighter" means all (i) salaried firefighters, including special forest wardens designated pursuant to § 10.1-1135, emergency medical services personnel, and arson investigators and (ii) volunteer firefighters and emergency medical services personnel, if the governing body of the political subdivision in which the principal office of such volunteer fire company or volunteer emergency medical services agency is located has adopted a resolution acknowledging such volunteer fire company or volunteer emergency medical services agency as employees for purposes of this title.

"Law-enforcement officer" means all (i) members of county, city, town, or authority police departments, (ii) sheriffs and deputy sheriffs, (iii) auxiliary or reserve police and auxiliary or reserve deputy sheriffs, if the governing body of the political subdivision in which the principal office of such auxiliary or reserve police and auxiliary or reserve deputy sheriff force is located has adopted a resolution acknowledging such auxiliary or reserve police and auxiliary or reserve deputy sheriffs as employees for purposes of this title, (iv) members of the State Police Officers' Retirement System, and (v) members of the Capitol Police as described in § 30-34.2:1.

1993, c. 719; 2001, c. 330; 2008, c. 109; 2015, cc. 502, 503.

§ 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 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.

2005, c. 223; 2011, cc. 572, 586; 2015, c. 221.

§ 65.2-104. Coverage of first responders in off-duty capacity during state of emergency.

A. Notwithstanding any other provision of law, if the Governor declares a state of emergency pursuant to the provisions of Chapter 3.2 (§ 44-146.13 et seq.) of Title 44, or any local director of emergency management with the consent of the appropriate local governing body declares an emergency pursuant to § 44-146.16, attributable to an enemy attack, sabotage or other hostile action, resource shortage, or fire, flood, earthquake or other natural cause, a claim for workers' compensation benefits shall be deemed to be in the course of employment of any first responder who, in response to a lawful order issued pursuant to the state of emergency, travels by the most expeditious route to or from his home or other location outside an assigned shift or work location to or from that shift or work location. Nothing in this section shall prohibit an employer from using any defense otherwise available under this title.

B. For purposes of this section, "first responder" shall include any person referenced in subdivision 1 l of the definition of "employee" in § 65.2-101 who provides emergency services, during the period that the states of emergency defined in subsection A are in effect.

2005, c. 429.

§ 65.2-105. Presumption that certain injuries arose out of and in the course of employment.

In any claim for compensation, where the employee (i) is physically or mentally unable to testify as confirmed by competent medical evidence, (ii) dies with there being no evidence that he ever regained consciousness after the accident, (iii) dies at the accident location or nearby, or (iv) is found dead where he is reasonably expected to be as an employee, and where the factual circumstances are of sufficient strength from which the only rational inference to be drawn is that the accident arose

out of and in the course of employment, it shall be presumed the accident arose out of and in the course of employment, unless such presumption is overcome by a preponderance of competent evidence to the contrary.

2011, cc. 229, 304; 2012, c. 841; 2013, c. 169; 2016, c. 358.

§ 65.2-106. Criminal justice training academy trainees.

A. Notwithstanding any other provision of law, any individual who receives training at a criminal justice training academy established pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2 shall not be deemed an employee of the criminal justice training academy. A criminal justice training academy shall have no liability to provide coverage or benefits under this title to any individual receiving training at the academy.

B. The employer that arranges for an individual to be trained at a criminal justice training academy shall provide coverage and benefits under this title to the individual during the period the individual is receiving training at the academy.

2013, c. 219.

§ 65.2-107. Post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by law-enforcement officers and firefighters.

A. As used in this section:

"Anxiety disorder" means a disorder that meets the diagnostic criteria for one or more of the anxiety disorders specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Depressive disorder" means a disorder that meets the diagnostic criteria for one or more of the depressive disorders specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Firefighter" means any (i) salaried firefighter, including special forest wardens designated pursuant to § 10.1-1135, emergency medical services personnel, and local or state fire scene investigator and (ii) volunteer firefighter and volunteer emergency medical services personnel.

"In the line of duty" means any action that a law-enforcement officer or firefighter was obligated or authorized to perform by rule, regulation, written condition of employment service, or law.

"Law-enforcement officer" means any (i) member of the State Police Officers' Retirement System; (ii) member of a county, city, or town police department; (iii) sheriff or deputy sheriff; (iv) Department of Emergency Management hazardous materials officer; (v) city sergeant or deputy city sergeant of the City of Richmond; (vi) Virginia Marine Police officer; (vii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (viii) Capitol Police officer; (ix) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (x) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in

§ 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority; (xi) officer of the police force established and maintained by the Norfolk Airport Authority; (xii) sworn officer of the police force established and maintained by the Virginia Port Authority; or (xiii) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education.

"Mental health professional" means a board-certified psychiatrist or a psychologist licensed pursuant to Title 54.1 who has experience diagnosing and treating post-traumatic stress disorder.

"Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder as specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Qualifying event" means an incident or exposure occurring in the line of duty on or after July 1, 2020, for post-traumatic stress disorder, and for purposes of subdivisions 1 through 4 of this definition, on or after July 1, 2023, for anxiety disorder or depressive disorder:

1. Resulting in serious bodily injury or death to any person or persons;

2. Involving a minor who has been injured, killed, abused, or exploited;

3. Involving an immediate threat to life of the claimant or another individual;

4. Involving mass casualties; or

5. Responding to crime scenes for investigation.

B. Post-traumatic stress disorder, anxiety disorder, or depressive disorder incurred by a law-enforcement officer or firefighter is compensable under this title if:

1. A mental health professional examines a law-enforcement officer or firefighter and diagnoses the law-enforcement officer or firefighter as suffering from post-traumatic stress disorder, anxiety disorder, or depressive disorder as a result of the individual's undergoing a qualifying event;

2. The post-traumatic stress disorder, anxiety disorder, or depressive disorder resulted from the law-enforcement officer's or firefighter's acting in the line of duty and, in the case of a firefighter, such firefighter complied with federal Occupational Safety and Health Act standards adopted pursuant to 29 C.F.R. 1910.134 and 29 C.F.R. 1910.156;

3. The law-enforcement officer's or firefighter's undergoing a qualifying event was a substantial factor in causing his post-traumatic stress disorder, anxiety disorder, or depressive disorder;

4. Such qualifying event, and not another event or source of stress, was the primary cause of the post-traumatic stress disorder, anxiety disorder, or depressive disorder; and

5. The post-traumatic stress disorder, anxiety disorder, or depressive disorder did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action of the law-enforcement officer or firefighter.

Any such mental health professional shall comply with any workers' compensation guidelines for approved medical providers, including guidelines on release of past or contemporaneous medical records.

C. Notwithstanding any provision of this title, workers' compensation benefits for any law-enforcement officer or firefighter payable pursuant to this section shall (i) include any combination of medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist, temporary total incapacity benefits under § 65.2-500, and temporary partial incapacity benefits under § 65.2-502 and (ii) be provided for a maximum of 52 weeks from the date of diagnosis. No medical treatment, temporary total incapacity benefits under § 65.2-500, or temporary partial incapacity benefits under § 65.2-502 shall be awarded beyond four years from the date of the qualifying event that formed the basis for the claim for benefits under this section. The weekly benefits received by a law-enforcement officer or a firefighter pursuant to § 65.2-500 or 65.2-502, when combined with other benefits, including contributory and noncontributory retirement benefits, Social Security benefits, and benefits under a long-term or short-term disability plan, but not including payments for medical care, shall not exceed the average weekly wage paid to such law-enforcement officer or firefighter.

D. No later than January 1, 2021, each employer of law-enforcement officers or firefighters shall (i) make peer support available to such law-enforcement officers and firefighters and (ii) refer a law-enforcement officer or firefighter seeking mental health care services to a mental health professional.

E. Each fire basic training program conducted or administered by the Department of Fire Programs or a municipal fire department in the Commonwealth shall provide, in consultation with the Department of Behavioral Health and Developmental Services, resilience and self-care technique training for any individual who begins basic training as a firefighter on or after July 1, 2021.

2020, cc. 1206, 1262; 2023, cc. 243, 244.

Chapter 2 - Virginia Workers' Compensation Commission

§ 65.2-200. Industrial Commission continued as the Virginia Workers' Compensation Commission; number, election and terms of members; vacancies; Chairman; members to devote entire time to office.

A. The Industrial Commission of Virginia is continued and shall hereafter be known as the Virginia Workers' Compensation Commission. All powers and duties conferred and imposed upon the Industrial Commission by any other law are hereby conferred upon and vested in the Virginia Workers' Compensation Commission.

B. The Commission shall consist of three members, one of whom shall be chosen by the joint vote of the two houses of the General Assembly convened in an even-numbered year, and who shall serve for terms of six years.

C. Whenever a vacancy in the Commission occurs or exists when the General Assembly is in session, the General Assembly shall elect a successor for the unexpired term. If the General Assembly is not in

session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy for a term ending thirty days after the commencement of the next session of the General Assembly, and the General Assembly shall elect a successor for the unexpired term.

D. Not more than one member of the Commission shall be a person who on account of his previous vocation, employment or affiliation shall be classified as a representative of employers, and not more than one such appointee shall be a person who on account of his previous vocation, employment or affiliation shall be classed as a representative of employees. The Commission thus composed shall elect one of its number chairman for a term of three years commencing on July 1, 1979, and each succeeding three years thereafter. Each member of the Commission shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties as such member.

Code 1950, § 65-9; 1954, c. 233; 1968, c. 660, § 65.1-10; 1971, Ex. Sess., c. 70; 1979, c. 459; 1991, c. 355; 2006, c. 838.

§ 65.2-201. General duties and powers of the Commission.

A. It shall be the duty of the Commission to administer this title and adjudicate issues and controversies relating thereto. In all matters within the jurisdiction of the Commission, it shall have the power of a court of record to administer oath, to compel the attendance of witnesses and the production of documents, to punish for contempt, to appoint guardians pursuant to Part C (§ 64.2-1700 et seq.) of Subtitle IV of Title 64.2, and to enforce compliance with its lawful orders and awards. The Commission shall make rules and regulations for carrying out the provisions of this title.

B. The Commission may appoint deputies, bailiffs, and such other personnel as it may deem necessary for the purpose of carrying out the provisions of this title.

C. The Commission or any member thereof or any person deputized by it may for the purposes of this title subpoena witnesses, administer or cause to be administered oaths, and examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute arising in instances in which the Commission has power to award compensation. This authority shall extend to requests from like agencies of other states who honor similar requests from the Commission.

D. The Commission shall publish and, upon request, furnish free of charge, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this title. The Commission shall publish a workers' compensation guide for employees which informs an injured employee of his rights under this title. If the Commission receives notice of an accident, it shall provide a workers' compensation guide to the employee.

E. A majority of the commissioners, including any deputy commissioner appointed or retired commissioner recalled pursuant to subsection D of § 65.2-705, shall constitute a quorum for the exercise of judicial, legislative, and discretionary functions of the Commission, whether there is a vacancy in

the Commission or not, but a quorum shall not be necessary for the exercise of its administrative functions.

F. The Commission shall tabulate the accident reports received from employers in accordance with § 65.2-900 and shall publish the same in the annual report of the Commission and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications, and the employers' reports shall be private records of the Commission and shall not be open for public inspection except for the inspection by the parties directly involved, and only to the extent of such interest. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

Code 1950, §§ 65-10, 65-14, 65-16, 65-19; 1952, c. 14; 1962, c. 339; 1968, c. 660, §§ 65.1-11, 65.1-18, 65.1-22; 1983, c. 102; 1991, c. 355; 2004, c. 178; 2012, c. 588; 2018, c. 250.

§ 65.2-202. Subpoena powers of the Commission; production of records and papers.

A. The Commission or any member or deputy commissioner shall have authority to enforce the attendance of all parties in interest and of witnesses and the production and examination of books, papers and records and to punish for contempt or disobedience of its orders as is vested in courts and judges by § 18.2-456, or Chapter 21 (§ 19.2-339 et seq.) of Title 19.2. Such attendance, production, and examination shall be required by subpoena of the Commission upon timely request therefor by any party to a proceeding before it, unless the Commission finds that the issuance of such subpoena is for dilatory purposes, would cause substantial inconvenience to such witnesses, or is not likely to produce significant relevant evidence.

B. The county or city sheriff or town sergeant, and their respective deputies, shall serve subpoenas of the Commission or its deputies and shall receive the same fees as are now provided by law for like civil actions. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts.

C. The clerk of any court of record shall, upon the application of any party in interest to a proceeding pending under this title, issue a subpoena for the attendance at such proceeding of any witness whose testimony is sought. The return of any subpoena so issued shall be made to the Commission, which shall enforce the attendance of any such witness at such proceeding.

Code 1950, §§ 65-17 through 65-18.1; 1952, c. 470; 1968, c. 660, §§ 65.1-19 through 65.1-21; 1970, c. 470; 1971, Ex. Sess., c. 7; 1981, c. 531; 1991, c. 355.

§ 65.2-203. Powers and duties of deputy commissioners and bailiffs.

A. Deputy commissioners shall have the power to subpoena witnesses, administer oaths, take testimony and hear the parties at issue and their representatives and witnesses, decide the issues in a summary manner, and make an award carrying out the decision. Deputies may exercise other powers and perform any duties of the Commission delegated to them by the Commission.

B. The bailiffs of the Commission shall, in all matters within the jurisdiction of the Commission, have the powers, discharge the functions, and perform the duties of a sheriff under the law. They shall

preserve order during the public sessions of the Commission; may make arrests and serve and make return on any writ or process awarded by the Commission; and shall execute any writ, order, or process of execution awarded upon the findings or judgments of the Commission in any matter within its jurisdiction. They shall exercise other powers and perform any duties as may be delegated to them.

Code 1950, §§ 65-10.1, 65-14; 1960, c. 287; 1962, c. 339; 1968, c. 660, §§ 65.1-12, 65.1-13; 1971, Ex. Sess., c. 155; 1991, c. 355.

§ 65.2-204. Administrative provisions: offices, meetings, travel, salary, and expenses.

A. The Commission shall be provided with adequate offices in the Capitol or in some other suitable building in the Commonwealth, in which the records shall be kept and its official business transacted during regular business hours. The Commission shall also be provided with necessary office furniture, stationery, and other supplies.

B. The Commission or any member thereof may hold sessions at any place within the Commonwealth as may be deemed necessary by the Commission.

C. All salaries and expenses of the Commission shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of state government.

Code 1950, §§ 65-12, 65-13, 65-15; 1968, c. 660, §§ 65.1-15 through 65.1-17; 1991, c. 355; 2013, c. 14.

§ 65.2-205. Ombudsman program; confidentiality.

A. The Commission may create an Ombudsman program and appoint an ombudsman to administer such program. The purpose of the Ombudsman program shall be to provide neutral educational information and assistance to persons who are not represented by an attorney, including those persons who have claims pending or docketed before the Commission. The ombudsman shall be an attorney licensed by the Virginia State Bar, in active status, and in good standing. The ombudsman and any Ombudsman program personnel shall carry out their duties with impartiality and shall not serve as an advocate for any person or provide legal advice.

B. All memoranda, work products, and other materials contained in the case files of the ombudsman or Ombudsman program personnel shall be confidential. Any communication between the ombudsman or Ombudsman program personnel and a person receiving assistance as provided by this section that is made during or in connection with the provision of Ombudsman program services, including screening, intake, and scheduling, shall be confidential.

Confidential materials and communications are not subject to disclosure and shall not be admissible in any judicial or administrative proceeding except where (i) a threat to inflict bodily injury is made; (ii) communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (iii) a complaint is made against Ombudsman program personnel by a person receiving assistance to the extent necessary for the complainant to prove misconduct or the Ombudsman program personnel to defend against such complaint; or (iv) communications are sought or offered to

prove or disprove a claim or complaint of misconduct or malpractice filed against the legal representative of a person who received assistance from the Ombudsman program.

Confidential materials and communications as described in this section are not subject to mandatory disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. The ombudsman and Ombudsman program personnel are immune from civil liability in their performance of the duties specified in this section.

2020, c. 616.

Chapter 3 - APPLICATION AND EFFECT OF TITLE

§ 65.2-300. Presumption of acceptance of provisions of title; exemptions; notice and rejection.

A. Every employer and employee, except as herein stated, shall be conclusively presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby. Except as otherwise provided herein, no contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer in whole or in part of any obligation created by this title.

B. An executive officer may reject coverage under this title for injury or death by accident, but not with respect to occupational disease, if prior to such accident, notice is given to the employer and filed with the Commission in the manner described herein.

The notice shall be in substantially the form prescribed by the Commission and shall be given by the executive officer by sending the same in a registered letter, addressed to the employer at his last known address or place of business, or by giving it personally to the employer or any of his agents upon whom a summons in a civil action may be served under the laws of the Commonwealth. A copy of the notice in prescribed form shall also be filed with the Commission. Such notice shall be effective as of the last to occur of (i) the date of the inception of the policy or (ii) the delivery of such notice to the employer as provided in this subsection.

C. An executive officer who rejects coverage under this title shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

D. An executive officer who has rejected coverage under this title may nevertheless by notice revoke such rejection and thereby accept coverage under the provisions of this title. A notice revoking such rejection shall be given to the employer and a copy filed with the Commission in the manner provided for rejecting such coverage. Coverage under this title shall not be extended to injuries that occur within five days of the giving of such notice.

Code 1950, §§ 65-20, 65-22, 65-23, 65-34, 65-40; 1968, c. 660, §§ 65.1-23, 65.1-25, 65.1-26, 65.1-37, 65.1-44; 1972, c. 619; 1973, c. 542; 1991, c. 355; 2000, c. 530.

§ 65.2-301. Victims of sexual assault.

A. Any employee who, in the course of employment, is sexually assaulted, as defined in §§ 18.2-61, 18.2-67.1, 18.2-67.3, or § 18.2-67.4, and promptly reports the assault to the appropriate law-enforcement authority, where the nature of such employment substantially increases the risk of such assault, upon a proper showing of damages compensable under this title, shall be deemed to have suffered an injury arising out of the employment and shall have a valid claim for workers' compensation benefits.

B. Notwithstanding the provisions of this title, an employee who is sexually assaulted and can identify the attacker may elect to pursue an action-at-law against the attacker, even if the attacker is the assaulted employee's employer or co-employee, for full damages resulting from such assault in lieu of pursuing benefits under this title, and upon repayment of any benefits received under this title.

C. Nothing in this title shall create a remedy for sexual harassment nor shall this title bar any action at law, that might otherwise exist, by an employee who is sexually harassed.

1982, c. 303, § 65.1-23.1; 1986, c. 395; 1988, c. 635; 1991, c. 355; 1992, c. 469.

§ 65.2-301.1. Public safety officers.

In situations where weather constitutes a particular risk of a public safety officer's employment and where the public safety officer's injury arose out of and in the course of his employment, absent a misconduct defense asserted pursuant to § 65.2-306, such injury shall be compensable under this title. As used in this section, "public safety officer" shall have the meaning ascribed to it in § 9.1-801.

2013, cc. 174, 458.

§ 65.2-301.2. Employee classification; disaster; personal protective equipment not considered.

A. For the purposes of this section, the terms "communicable disease of public health threat," "disaster," and "state of emergency" have the same meaning as provided in § 44-146.16.

B. In any proceeding under the provisions of this title, a hiring party providing an individual with personal protective equipment in response to a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared pursuant to § 44-146.17 shall not be considered in any determination regarding whether such individual is an employee or independent contractor.

2021, Sp. Sess. I, c. 448.

§ 65.2-302. Statutory employer.

A. When any person (referred to in this section as "owner") undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (referred to in this section as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any

worker employed in the work any compensation under this title which he would have been liable to pay if the worker had been immediately employed by him.

B. When any person (referred to in this section as "contractor") contracts to perform or execute any work for another person which work or undertaking is not a part of the trade, business or occupation of such other person and contracts with any other person (referred to in this section as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any part of the work undertaken by such contractor, then the contractor shall be liable to pay to any worker employed in the work any compensation under this title which he would have been liable to pay if that worker had been immediately employed by him.

C. When the subcontractor in turn contracts with still another person (also referred to as "sub-contractor") for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, then the liability of the owner or contractor shall be the same as the liability imposed by subsections A and B of this section.

D. 1. Liability for compensation pursuant to this section may not be imposed against any person who, at the time of an injury sustained by a worker engaged in the maintenance or repair of real property managed by such person, and for which injury compensation is sought:

a. Was engaged in the business of property management on behalf of the owners of such property and was acting merely as an agent of the owner;

b. Did not engage in and had no employees engaged in the same trade, business or occupation as the worker seeking compensation; and

c. Did not seek or obtain from such property's owners, or from any other property owners for whom such person rendered property management services, profit from the services performed by individuals engaged in the same trade, business or occupation as the worker seeking compensation.

2. For purposes of this subsection, "the business of property management" means the oversight, supervision, and care of real property or improvements to real property, on behalf of such property's owners.

3. For purposes of this subsection, "property owners" or "property's owners" means (i) owners in fee of such property or (ii) persons having legal entitlement to the use or occupation of such property at the time of the injury for which liability is sought to be imposed pursuant to this section.

Code 1950, §§ 65-26 through 65-28; 1968, c. 660, §§ 65.1-29 through 65.1-31; 1991, c. 355; 1999, c. 877.

§ 65.2-303. Recovery from subcontractor; proceedings against owner or contractor.

A. Nothing in §§ 65.2-302 and 65.2-304 shall be construed as preventing a worker from recovering compensation under this title from a subcontractor (as described in § 65.2-302) instead of from the principal contractor (as described in § 65.2-302) but he shall not collect from both.

B. When compensation is claimed from or proceedings are taken against the owner or contractor (as described in § 65.2-302), then, in the application of this title, reference to the owner or contractor shall be substituted for reference to the subcontractor (as described in § 65.2-302), except that the amount of compensation shall be calculated with reference to the earnings of the worker under the subcontractor by whom he is immediately employed.

Code 1950, §§ 65-29, 65-31; 1968, c. 660, §§ 65.1-32, 65.1-34; 1991, c. 355.

§ 65.2-304. Indemnity of principal from subcontractor.

When the principal contractor is liable to pay compensation under § 65.2-302 or § 65.2-303, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the worker independently of such sections or from an intermediate contractor and shall have a cause of action therefor.

A principal contractor when sued by a worker of a subcontractor shall have the right to join that subcontractor or any intermediate contractor as a party.

Code 1950, § 65-30; 1968, c. 660, § 65.1-33; 1991, c. 355.

§ 65.2-305. Voluntary subjection to provisions of title; effect of taking out insurance or qualifying as self-insurer.

A. Those employers not subject to this title may, by complying with the provisions of this title and the applicable rules of the Commission, voluntarily elect to be bound by it as to accidents or occupational diseases or both.

B. Every employer taking out a workers' compensation insurance policy, or qualifying as a self-insurer, shall be subject to all the provisions of this title, regardless of the number of employees or whether he is an employer of farm and horticultural laborers and domestic servants. Such employers not otherwise covered by this title shall be subject to this title only during the period covered by such insurance. Every employee of an employer who has complied with the foregoing requirements shall be subject to all the provisions of this title except that executive officers may reject coverage as provided in § 65.2-300.

Code 1950, § 65-32; 1964, c. 602; 1968, c. 660, § 65.1-35; 1991, c. 355.

§ 65.2-306. When compensation not allowed for injury or death; burden of proof.

A. No compensation shall be awarded to the employee or his dependents for an injury or death caused by:

1. The employee's willful misconduct or intentional self-inflicted injury;

2. The employee's attempt to injure another;

3. The employee's intoxication;

4. The employee's willful failure or refusal to use a safety appliance or perform a duty required by statute;

5. The employee's willful breach of any reasonable rule or regulation adopted by the employer and brought, prior to the accident, to the knowledge of the employee; or

6. The employee's use of a nonprescribed controlled substance identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.

B. The person or entity asserting any of the defenses in this section shall have the burden of proof with respect thereto. However, if the employer raises as a defense the employee's intoxication or use of a nonprescribed controlled substance identified as such in Chapter 34 of Title 54.1, and there was at the time of the injury an amount of alcohol or nonprescribed controlled substance in the bodily fluids of the employee which (i) is equal to or greater than the standard set forth in § 18.2-266, or (ii) in the case of use of a nonprescribed controlled substance, yields a positive test result from a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory, there shall be a rebuttable presumption, which presumption shall not be available if the employee dies as a result of his injuries, that the employee was intoxicated due to the consumption of alcohol or using a nonprescribed controlled substance at the time of his injury. The employee may overcome such a presumption by clear and convincing evidence.

Code 1950, § 65-35; 1968, c. 660, § 65.1-38; 1991, cc. 166, 355; 1994, cc. 600, 804; 2002, c. 636.

§ 65.2-307. Employee's rights under Act exclude all others; exception.

A. The rights and remedies herein granted to an employee when his employer and he have accepted the provisions of this title respectively to pay and accept compensation on account of injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death.

B. If a court of the Commonwealth makes a finding in a final unappealed order based on an evidentiary hearing or a factual stipulation of the parties and participants thereto that the cause of action relating to an accident, injury, disease, or death is barred by this section, that finding shall be res judicata between those same parties and estop them and any employer, uninsured employer's fund, guarantee fund, responsible entities, or statutory employer from arguing before the Commission that the accident, injury, disease, or death did not arise out of and in the course of such employee's employment. If the Commission or a court on appeal from the Commission makes a finding in a final unappealed order based on an evidentiary hearing, hearing on the record, or a factual stipulation of the parties that the claims relating to an accident, injury, disease, or death did not arise out of or in the course of such employee's employment, then that finding shall be res judicata and estop those same parties from arguing before a court of the Commonwealth that the accident is barred by the exclusivity provisions of the Act. However, except in the case of a self-insured employer or business entity closely related to a party to the court proceeding, in order for the court finding to be res judicata as to a non-party, notice shall be provided in the same manner as allowed in subsection F of § 38.2-2206 or § 8.01-288 to any employer, uninsured employer's fund, guarantee fund, responsible entities, or

statutory employer sought to be bound. In addition, any such entities so notified shall be given the same opportunity to be heard in that court proceeding as a party to the same, but limited to the issue of whether the accident, injury, disease, or death arose out of and in the course of the employee's employment. Failure to provide notice to any party to the court proceeding shall not affect the rights, privileges, or obligations of said parties thereto but shall affect only the applicability of this subsection and only as stated herein. Furthermore, the findings by either the Commission or the court under this subsection shall not prevent the parties and participants to those proceedings from raising or relying upon any and all other available defenses.

C. Notwithstanding this exclusion, nothing in the Act shall bar an employer from voluntarily agreeing to pay an employee compensation above and beyond those benefits provided for in the Act. Nothing herein, however, shall be deemed to affect or alter any existing right or remedy of the employer or employee under the Act.

Code 1950, § 65-37; 1968, c. 660, § 65.1-40; 1991, c. 355; 1999, c. 842; 2015, cc. 606, 624.

§ 65.2-308. Discharge of employee for exercising rights prohibited; civil action; relief.

A. No employer or person shall discharge an employee solely because the employee intends to file or has filed a claim under this title or has testified or is about to testify in any proceeding under this title. The discharge of a person who has filed a fraudulent claim is not a violation of this section.

B. The employee may bring an action in a circuit court having jurisdiction over the employer or person who allegedly discharged the employee in violation of this section. The court shall have jurisdiction, for cause shown, to restrain violations and order appropriate relief, including actual damages and attorney's fees to successful claimants and the rehiring or reinstatement of the employee, with back pay plus interest at the judgment rate as provided in § 6.2-302.

1982, c. 327, § 65.1-40.1; 1986, c. 259; 1991, c. 355.

§ 65.2-309. Lien against settlement proceeds or verdict in third party suit; subrogation of employer to employee's rights against third parties; evidence; recovery; compromise.

A. A claim against an employer under this title for injury, occupational disease, or death benefits shall create a lien on behalf of the employer against any verdict or settlement arising from any right to recover damages which the injured employee, his personal representative or other person may have against any other party for such injury, occupational disease, or death, and such employer also shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative, the legal liability of such other party. The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages.

B. Any amount collected by the employer under the provisions of this section in excess of the amount paid by the employer or for which he is liable shall be held by the employer for the benefit of the injured employee, his personal representative, or other person entitled thereto, less a proportionate

share of such amounts as are paid by the employer for reasonable expenses and attorney's fees as provided in § 65.2-311.

C. No compromise settlement shall be made by the employer in the exercise of such right of subrogation without the approval of the Commission and the injured employee or the personal representative or dependents of the deceased employee being first obtained.

D. If an injured employee, his personal representative, or a person acting on behalf of the injured employee receives the proceeds of the settlement or verdict and the employer's lien pursuant to subsection A has not been satisfied, the employer shall have the right to recover its lien either as a credit against future benefits or through a civil action against the person who received the proceeds.

E. Any arbitration held by the employer in the exercise of such right of subrogation (i) shall be limited solely to arbitrating the amount and validity of the employer's lien, (ii) shall not affect the employee's rights in any way, and (iii) shall not be held unless:

1. Prior to the commencement of such arbitration the employer has provided the injured employee and his attorney, if any, with an itemization of the expenses associated with the lien that is the subject of the arbitration;

2. Upon receipt of the itemization of the lien, the employee shall have 21 days to provide a written objection to any expenses included in the lien to the employer, and if the employee does not do so any objections to the lien to be arbitrated shall be deemed waived;

3. The employer shall have 14 days after receipt of the written objection to notify the employee of any contested expenses that the employer does not agree to remove from the lien, and if the employer does not do so any itemized expense objected to by the employee shall be deemed withdrawn and not included in the arbitration; and

4. Any contested expenses remaining shall have been submitted to the Commission for a determination of their validity and the Commission has made such determination of validity prior to the commencement of the arbitration.

Code 1950, § 65-38; 1960, c. 89; 1968, c. 660, § 65.1-41; 1991, c. 355; 2004, cc. 914, 941; 2017, cc. 81, 288.

§ 65.2-309.1. Creation of lien and subrogation of employer to employee's rights to recover uninsured or underinsured motorist benefits pursuant to insurance coverage carried by and at the expense of employer.

A. A claim against an employer under this title for injury or death benefits shall create a lien and right of subrogation on behalf of the employer, as set forth in § 65.2-309, against proceeds recovered by the injured employee pursuant to the uninsured or underinsured motorist provisions of a policy of motor vehicle insurance carried by and at the expense of the employer. In any action by an employee against any person other than the employer, the court shall, after reasonable notice to the parties and the employer, ascertain the amount of compensation paid and expenses for medical, surgical and

hospital attention and supplies, and funeral expenses incurred by the employer under the provisions of this title and deduct therefrom a proportionate share of such amounts as are paid by the plaintiff for reasonable expenses and attorney's fees as provided in § 65.2-311; and, in the event of judgment against such person other than the employer, the court shall, in its order, require that the judgment debtor pay such compensation and expenses of the employer, less said share of expenses and attorney's fees, so ascertained by the court out of the amount of the judgment, so far as sufficient, and the balance, if any, to the judgment creditor.

B. If an injured employee is entitled to underinsured motorist coverage under more than one policy, the order of priority shall be as provided by subsection B of § 38.2-2206.

1995, c. 267; 2004, cc. 914, 941.

§ 65.2-310. Protection of employer when employee sues third party.

In any action by an employee, his personal representative or other person against any person other than the employer, the court shall, after reasonable notice to the parties and the employer, ascertain the amount of compensation paid and expenses for medical, surgical and hospital attention and supplies, and funeral expenses incurred by the employer under the provisions of this title and deduct therefrom a proportionate share of such amounts as are paid by the plaintiff for reasonable expenses and attorney's fees as provided in § 65.2-311; and, in event of judgment against such person other than the employer, the court shall in its order require that the judgment debtor pay such compensation and expenses of the employer, less said share of expenses and attorney's fees, so ascertained by the court out of the amount of the judgment, so far as sufficient, and the balance, if any, to the judgment creditor.

Code 1950, § 65-39; 1956, c. 534; 1960, c. 89; 1968, c. 660, § 65.1-42; 1991, c. 305; 2004, cc. 914, 941.

§ 65.2-311. Expenses and attorney's fees in action under § 65.2-309 or § 65.2-310.

A. Except as provided in subsection B, in any action, or claim for damages, by an employee, his personal representative or other person against any person other than the employer, and in any such action brought, or claim asserted, by the employer under his right of subrogation provided for in § 65.2-309, if a recovery is effected, either by judgment or voluntary settlement, the reasonable expenses and reasonable attorney's fees of such claimants shall be apportioned pro rata between the employer and the employee, his personal representative or other person, as their respective interests may appear.

B. If the employer is required to institute an action against any party to recover some or all of its lien pursuant to subsection D of § 65.2-309, the employer shall not be required to pay any share of the reasonable expenses and reasonable attorney's fees associated with that portion of its lien that is not preserved by the employee, his personal representative or other person.

Code 1950, § 65-39.1; 1960, c. 89; 1968, c. 660, § 65.1-43; 1991, c. 355; 2004, cc. 914, 941.

§ 65.2-312. False statements, representations, etc., in connection with an award; penalties.

A. It shall be unlawful for any person to knowingly make, file or use any writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry in connection with an award under this title. It shall also be unlawful for any person to aid or abet another in a violation of this section.

B. A violation of this section shall be punishable as a Class 6 felony.

C. Any person convicted of a violation of this section who is licensed to practice any of the healing arts as defined in § 54.1-2900 or to practice law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, and who committed the violation while engaged in such practice, may have such license suspended or revoked in accordance with the provisions of Chapter 29 (§ 54.1-2900 et seq.) and Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, respectively.

D. Venue for the prosecution of a violation of this section shall lie in the county or city wherein the injury occurred.

1993, c. 792; 1994, cc. 11, 366.

§ 65.2-313. Method of determining employer's offset in event of recovery under § 65.2-309 or § 65.2-310.

In any action or claim for damages by an employee, his personal representative or other person against any person other than the employer under § 65.2-310, or in any action brought, or claim asserted, by the employer under his right of subrogation provided for in § 65.2-309, if a recovery is effected, the employer shall pay to the employee a percentage of each further entitlement as it is submitted equal to the ratio the total attorney's fees and costs bear to the total third-party recovery until such time as the accrued post-recovery entitlement equals that sum which is the difference between the gross recovery and the employer's compensation lien. In ordering payments under this section, the Commission shall take into account any apportionment made pursuant to § 65.2-311.

For the purposes of this section, "entitlement" means compensation and expenses for medical, surgical and hospital attention and funeral expenses to which the claimant is entitled under the provisions of this title, which entitlements are related to the injury for which the third-party recovery was effected.

1994, c. 586.

Chapter 4 - Occupational Diseases

§ 65.2-400. "Occupational disease" defined.

A. As used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;

2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

3. It can be fairly traced to the employment as the proximate cause;

4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and

6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

C. Hearing loss and the condition of carpal tunnel syndrome are not occupational diseases but are ordinary diseases of life as defined in § 65.2-401.

Code 1950, § 65-42; 1952, c. 603; 1968, c. 660, § 65.1-46; 1970, c. 470; 1986, c. 378; 1991, c. 355; 1997, cc. 15, 405.

§ 65.2-401. "Ordinary disease of life" coverage.

An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease for purposes of this title if each of the following elements is established by clear and convincing evidence, (not a mere probability):

1. That the disease exists and arose out of and in the course of employment as provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of the employment, and

2. That one of the following exists:

a. It follows as an incident of occupational disease as defined in this title; or

b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or

c. It is characteristic of the employment and was caused by conditions peculiar to such employment.

1986, c. 378, § 65.1-46.1; 1989, c. 502; 1991, c. 355; 1997, cc. 15, 405.

§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in

total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of any of the following persons who have completed five years of service in their position as (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn members of the enforcement division of the Department of Wildlife Resources, (ix) Capitol Police officers, (x) special agents of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force established and maintained by the Virginia Port Authority, (xiv) campus police officers appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education, and (xv) salaried or volunteer emergency medical services personnel, as defined in § 32.1-111.1, when such emergency medical services personnel is operating in a locality that has legally adopted a resolution declaring that it will provide one or more of the presumptions under this subsection, shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian, breast, colon, brain, testicular, bladder, or thyroid cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any of the following persons who have completed five years of service in their position as (i) salaried or volunteer firefighters; (ii) Department of Emergency Management hazardous materials officers; (iii) commercial vehicle enforcement officers or motor carrier safety troopers employed by the Department of State Police; (iv) arson investigators or bomb investigators employed by the Department of State Police; (v) full-time sworn members of the enforcement division of the Department of Motor Vehicles; or (vi) members of the State Police Officers' Retirement System who collect, analyze, or handle hazardous materials, as defined in § 44-146.34, infectious biological substances and radiological agents, as defined in § 18.2-52.1, fentanyl or fentanyl analogs, or methamphetamine, its salts, isomers, or salts of its isomers shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For colon, brain, or testicular cancer, the presumption shall not apply for any individual who was diagnosed with such a condition before July 1, 2020. For bladder or thyroid

cancer, the presumption shall not apply for any individual who was diagnosed with such a condition before July 1, 2023.

D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, "firefighter" includes special forest wardens designated pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers primarily to perform firefighting services.

1975, c. 330, § 65.1-4.1; 1976, cc. 187, 772, § 65.1-47.1; 1977, cc. 326, 620; 1978, c. 761; 1983, c. 357; 1987, c. 308; 1991, cc. 354, 355; 1994, cc. 791, 960; 1997, c. 714; 1999, cc. 581, 597, 602, 604, 607; 2000, c. 1013; 2001, cc. 330, 581; 2002, cc. 309, 737, 789; 2007, cc. 143, 616; 2009, c. 515; 2012, c. 776; 2015, cc. 38, 502, 503, 730; 2020, cc. 498, 499, 958; 2021, Sp. Sess. I, cc. 436, 437; 2023, cc. 104, 105, 204, 205.

§ 65.2-402.1. Presumption as to death or disability from infectious disease.

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, or salaried or volunteer emergency medical services personnel; (ii) member of the State Police Officers'

Retirement System; (iii) member of county, city, or town police departments; (iv) sheriff or deputy sheriff; (v) Department of Emergency Management hazardous materials officer; (vi) city sergeant or deputy city sergeant of the City of Richmond; (vii) Virginia Marine Police officer; (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (ix) Capitol Police officer; (x) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1; (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority; (xii) officer of the police force established and maintained by the Norfolk Airport Authority; (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority; (xv) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education; (xvi) correctional officer as defined in § 53.1-1; or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this subsection, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this subsection gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. 1. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19 and signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102; (ii) law-enforcement officer, as defined in § 9.1-101; (iii) correctional officer, as defined in § 53.1-1; or (iv) regional jail officer shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-

19, an incubation period consistent with COVID-19, and signs and symptoms of COVID-19 that require medical treatment.

C. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

D. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

E. 1. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

2. The presumptions described in subdivision B 1 shall not apply to any person offered by such person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the U.S. Food and Drug Administration, unless the person is immunized or the person's physician determines in writing that the immunization would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this

section to undergo such immunization shall disqualify the person from the presumptions described in subdivision B 1.

F. 1. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions; (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons; (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed; and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

2. The presumptions described in subdivision B 1 shall apply to any person entitled to invoke them for any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2022, and;

a. Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed physician, an advanced practice registered nurse, or a physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19; or

b. On or after July 1, 2020, and prior to December 31, 2022, the claimant received a positive diagnosis of COVID-19 from a licensed physician, an advanced practice registered nurse, or a physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

3. The presumptions described in subdivision B 2 shall apply to any person entitled to invoke them for any death or disability occurring on or after July 1, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after July 1, 2020, and prior to December 31, 2021, the claimant received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19, and presented with signs and symptoms of COVID-19 that required medical treatment.

G. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such phys-

icians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

2002, c. 820; 2003, c. 842; 2007, cc. 87, 365; 2009, c. 417; 2011, c. 211; 2012, c. 776; 2015, cc. 38, 502, 503, 730; 2020, cc. 958, 1150, 1152; 2021, Sp. Sess. I, cc. 507, 526, 547; 2022, c. 644; 2023, c. 183.

§ 65.2-403. Provisions in respect to injury by accident, etc., applicable to occupational disease.

A. When the employer and employee are subject to the provisions of this title, first communication of the diagnosis of an occupational disease to the employee or death of the employee resulting from an occupational disease as herein listed and defined shall be treated as the happening of an injury by accident, and the employee or in case of his death his dependents shall be entitled to compensation as provided by this title.

B. An employee who has an occupational disease that is covered by this title shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who has a compensable injury by accident, except that the period during which the employer shall be required to furnish medical attention, including reasonably necessary diagnostic services, shall begin fifteen days prior to the date of first communication of the diagnosis of the occupational disease to the employee. In the event of death the same funeral benefits shall be paid as in the case of death from a compensable accident.

Code 1950, § 65-46; 1966, c. 504; 1968, c. 660, § 65.1-49; 1984, c. 414; 1991, c. 355.

§ 65.2-404. What employer and carrier liability.

A. When an employee has an occupational disease that is covered by this title, the employer in whose employment he was last injuriously exposed to the hazards of the disease and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier.

B. For the purposes of this section, "injurious exposure" means an exposure to the causative hazard of such disease which is reasonably calculated to bring on the disease in question. Exposure to the causative hazard of pneumoconiosis for ninety work shifts shall be conclusively presumed to constitute injurious exposure.

C. The operator of a coal mining business covered by this title who acquires the business or substantially all of the assets thereof is liable for, and must secure the payment of, all benefits which would have been payable by the prior operator under this section with respect to persons previously employed by such business if the acquisition had not occurred and the prior operator had continued to operate the business; and the prior operator of the business is not relieved of any liability under this section.

Code 1950, §§ 65-47, 65-49; 1952, c. 205; 1960, c. 297; 1962, c. 588; 1968, c. 660, §§ 65.1-50, 65.1-52; 1970, c. 470; 1972, cc. 612, 619; 1974, c. 201; 1975, cc. 27, 471; 1979, cc. 80, 201; 1982, c. 82; 1983, c. 469; 1984, c. 411; 1985, c. 191; 1989, c. 502; 1990, c. 417; 1991 c. 355.

§ 65.2-405. Notice to be given.

A. Within sixty days after a diagnosis of an occupational disease is first communicated to the employee, he, or someone in his behalf, shall give written notice thereof to the employer in accordance with § 65.2-600, but in no case shall the failure to give notice deprive the employee of his cause of action for an occupational disease, unless it be shown that such failure resulted in clear prejudice to the employer.

B. The statute of limitations provided under subdivision A 1 of § 65.2-406 shall be tolled until the employer gives the employee notice in substantially the following form:

NOTICE TO EMPLOYEE

IN THE EVENT A DIAGNOSIS OF COAL MINERS' PNEUMOCONIOSIS (INCLUDING BLACK LUNG, SILICOSIS, PNEUMOCONIOSIS, COAL WORKERS' PNEUMOCONIOSIS, ROCK DUST, DUST, DUST ON YOUR LUNGS OR TERMS OF SIMILAR MEANING) IS COMMUNICATED TO YOU, YOU MAY HAVE A WORKERS' COMPENSATION CLAIM. HOWEVER, SUCH CLAIM MAY BE LOST IF YOU DO NOT FILE IT WITH THE VIRGINIA WORKERS' COMPENSATION COMMISSION WITHIN THE TIME LIMIT PROVIDED BY LAW. YOU MAY FIND OUT WHAT TIME LIMIT APPLIES TO YOUR CLAIM BY CONTACTING THE WORKERS' COMPENSATION COMMISSION. THE FACT THAT YOU ARE TOLD THAT YOU HAVE COAL MINERS' PNEUMOCONIOSIS WHICH HAS NOT REACHED THE COMPENSABLE LEVEL UNDER THE GUIDELINES OF THE WORKERS' COMPENSATION COMMISSION OR THAT YOU ARE STILL ABLE TO WORK OR ARE WORKING DOES NOT STOP THE TIME FROM RUNNING OR OTHERWISE RELIEVE YOU OF YOUR DUTY TO FILE YOUR CLAIM WITH THE WORKERS' COMPENSATION COMMISSION.

Such notice shall also include the address and telephone number which the employee may use to contact the Commission.

The employer shall post and keep posted, conspicuously, the above notice in, on, or about the mine operations in places usually frequented by employees.

C. The provisions of subsection B shall apply only to claims arising on or after July 1, 1991.

Code 1950, § 65-48; 1952, c. 205; 1958, c. 457; 1968, c. 660, § 65.1-51; 1970, c. 470; 1972, c. 619; 1991, cc. 301, 355.

§ 65.2-406. Limitation upon claim; diseases covered by limitation.

A. The right to compensation under this chapter shall be forever barred unless a claim is filed with the Commission within one of the following time periods:

1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or greater as classified under the current International Labour Office Classification of Radiographs of the Pneumoconiosis, is first communicated to the employee or the legal representative of his estate or within five years from the date of the last injurious exposure in employment, whichever first occurs;

2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee or within seven years from the date of the last injurious exposure in employment, whichever first occurs;

3. For asbestosis, two years after a diagnosis of the disease is first communicated to the employee;

4. For symptomatic or asymptomatic infection with human immunodeficiency virus including acquired immunodeficiency syndrome, two years after a positive test for infection with human immunodeficiency virus;

5. For diseases directly attributable to the rescue and relief efforts at the Pentagon following the terrorist attack of September 11, 2001, two years after a diagnosis of the disease is first communicated to the employee;

6. For cancers listed in subsection C of § 65.2-402, two years after a diagnosis of the disease is first communicated to the employee or within 10 years from the date of the last injurious exposure in employment, whichever first occurs; or

7. For all other occupational diseases, two years after a diagnosis of the disease is first communicated to the employee or within five years from the date of the last injurious exposure in employment, whichever first occurs.

B. If death results from an occupational disease within any of such periods, the right to compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission within three years after such death. The limitations imposed by this section as amended shall be applicable to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not apply to pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:

1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;

2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;

3. Radium disability or disability due to exposure to radioactive substances and X-rays;

4. Ulceration due to chrome compound or to caustic chemical acids or alkalies and undulant fever caused by the industrial slaughtering and processing of livestock and handling of hides;

5. Mesothelioma due to exposure to asbestos; and

6. Angiosarcoma of the liver due to vinyl chloride exposure.

C. A claim for benefits pursuant to subdivision A 6 made as a result of the diagnosis of a disease listed in subsection C of § 65.2-402 shall be barred if the employee is 65 years of age or older, regardless of the date of diagnosis, communication, or last injurious exposure in employment.

D. When a claim is made for benefits for a change of condition in an occupational disease, such as advance from one stage or category to another, a claim for change in condition must be filed with the

Commission within three years from the date for which compensation was last paid for an earlier stage of the disease, except that a claim for benefits for a change in condition in asbestosis must be filed within two years from the date when diagnosis of the advanced stage is first communicated to the employee and no claim for benefits for an advanced stage of asbestosis shall be denied on the ground that there has been no subsequent accident. For a first or an advanced stage of asbestosis or mesothelioma, if the employee is still employed in the employment in which he was injuriously exposed, the weekly compensation rate shall be based upon the employee's weekly wage as of the date of communication of the first or advanced stage of the disease, as the case may be. If the employee is unemployed, or employed in another employment, the weekly compensation rate shall be based upon the average weekly wage of a person of the same or similar grade and character in the same class of employment in which the employee was injuriously exposed and preferably in the same locality or community on the date of communication to the employee of the advanced stage of the disease or mesothelioma. The weekly compensation rates herein provided shall be subject to the same maximums and minimums as provided in § 65.2-500.

Code 1950, § 65-49; 1952, c. 205; 1960, c. 297; 1962, c. 588; 1968, c. 660, § 65.1-52; 1970, c. 470; 1972, c. 612; 1974, c. 201; 1975, cc. 27, 471; 1979, cc. 80, 201; 1982, c. 82; 1983, c. 469; 1984, c. 411; 1985, c. 191; 1989, c. 502; 1990, c. 417; 1991, c. 355; 1992, c. 475; 1995, c. 324; 2005, c. 433; 2011, c. 513; 2022, cc. 497, 498.

§ 65.2-407. Waiver.

A. When an employee or prospective employee, though not incapacitated for work, is found to be affected by, or susceptible to, a specific occupational disease he may, subject to the approval of the Commission, be permitted to waive in writing compensation for any aggravation of his condition that may result from his working or continuing to work in the same or similar occupation for the same employer.

B. The Commission shall approve a waiver for coal worker's pneumoconiosis and silicosis only when presented with X-ray evidence from a physician qualified in the opinion of the Commission to make the determination and which demonstrates a positive diagnosis of the pneumoconiosis or the existence of a lung condition which makes the employee or prospective employee significantly more susceptible to the pneumoconiosis.

C. In considering approval of a waiver, the Commission may supply any medical evidence to a disinterested physician for his opinion as to whether the employee is affected by the disease or has the preexisting condition.

Code 1950, § 65-50; 1968, c. 660, § 65.1-53; 1970, c. 517; 1979, c. 201; 1991, c. 355.

Chapter 5 - COMPENSATION AND PAYMENT THEREOF

§ 65.2-500. Compensation for total incapacity; computation of average wage; exclusion of AmeriCorps members, certain Food Stamp Employment and Training Program participants, and certain Temporary Assistance for Needy Families participants.

A. Except as provided in subsections E, F and G, when the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to 66 2/3 percent of his average weekly wages, with a minimum not less than 25 percent and a maximum of not more than 100 percent of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee. Any farm employer who continues to furnish benefits while the employee is incapacitated shall be given credit for the value of such benefits so furnished when computing the compensation due the employee.

B. For the purpose of this section the average wage in the Commonwealth shall be determined by the Commission as follows: On or before January 1 of each year, the total wages, excluding wages of United States government employees, reported on contribution reports to the Virginia Employment Commission for the 12-month period ending the preceding June 30 shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for that 12-month period by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest dollar. The average weekly wage as so determined shall be applicable for the full period during which income benefits are payable, when the date of occurrence of injury or of disablement in the case of disease falls within the year commencing with the July 1 following the date of determination.

C. The minimum or the maximum weekly income benefits shall not be changed for any year unless the computation herein provided results in an increase or decrease of $2 or more, raised to the next even dollar in the level of the minimum or the maximum weekly income benefits.

D. The weekly compensation on account of total and permanent incapacity as defined by subsection C of § 65.2-503 shall continue for the lifetime of the injured employee without limit as to total amount.

E. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive weekly compensation for total incapacity, whether permanent or temporary, regardless of whether the injury results in death.

F. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program as defined in subdivision s of § 65.2-101 shall not be eligible to receive weekly compensation for total incapacity, whether permanent or temporary, regardless of whether the injury results in death.

G. Temporary Assistance for Needy Families recipients participating in the work experience component of the Virginia Initiative for Education and Work as defined in subdivision t of § 65.2-101 shall not be eligible to receive weekly compensation for total incapacity, whether permanent or temporary, regardless of whether the injury results in death.

Code 1950, § 65-51; 1952, c. 226; 1954, c. 654; 1956, c. 243; 1958, c. 568; 1960, c. 556; 1962, c. 503; 1964, c. 94; 1966, c. 64; 1968, cc. 8, 660, § 65.1-54; 1970, c. 470; 1972, c. 229; 1973, c. 542; 1974, c. 560; 1975, c. 447; 1991, c. 355; 1997, c. 511; 2004, c. 888; 2005, c. 472; 2019, c. 210.

§ 65.2-501. Incapacity after permanent loss.

After compensation has been paid as provided in § 65.2-503, the employee may, within one year from the date compensation was last due under this section, file an application for compensation for incapacity to work, subject to the provisions of §§ 65.2-500 and 65.2-502. Such application shall be considered and determined as of the date incapacity for work actually begins or as of the date ninety days prior to the date of filing, whichever is later.

Code 1950, § 65-53; 1964, cc. 116, 190; 1968, cc. 347, 660, § 65.1-56; 1970, c. 470; 1972, c. 229; 1975, cc. 446, 450; 1976, c. 655; 1982, c. 326; 1983, c. 287; 1987, c. 560; 1988, cc. 564, 596.

§ 65.2-502. Compensation for partial incapacity; exclusion of AmeriCorps members, certain Food Stamp Employment and Training Program participants, and certain Temporary Assistance for Needy Families participants.

A. Except as otherwise provided in § 65.2-503 or 65.2-510, or as provided in subsections B, C and D, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation equal to 66 2/3 percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500. For purposes of calculating an injured employee's post-injury average weekly wage, the following rules shall apply to commissioned employees, self-employed income, and income derived from an employer in which the injured worker or their immediate family has an ownership interest: if the period of partial incapacity exists for 13 weeks or less, the injured employee's post-injury average weekly wage shall be computed by dividing the employee's total earnings during the first two weeks of partial incapacity by two, subject to retroactive adjustments as provided hereinafter. If the period of partial incapacity exists for more than 13 weeks, the injured employee's post-injury average weekly wage for each 13-week interval shall be computed by dividing the employee's total earnings during the period of partial incapacity by the number of weeks included in such period; however, if an injured employee's period of partial incapacity ends after the close of a 13-week interval but before the close of the next 13-week interval, the injured employee's post-injury average weekly wage for such portion of the subsequent 13-week interval shall be calculated by dividing the employee's total earnings during the period of partial incapacity by the number of weeks included in such period. When an injured employee is under a continuing award of temporary partial benefits, the employer or the employee shall be entitled to seek a retroactive adjustment of the temporary partial rate for the 90 days preceding the application seeking such adjustment of the temporary partial rate computed in accordance with the above method of calculation. Any resulting amount due to the employee shall be paid to the employee. Any resulting credit due to the employer may be offset dollar for dollar against future compensation benefits due the injured employee, subject to the provisions of § 65.2-520. The employee is required pursuant to § 65.2-712 to immediately disclose increases in his earnings. For all other employments, the employee's post-injury average weekly wage may, in the Commission's discretion, be calculated using the preceding formula or a week-to-week calculation. In case the partial incapacity begins after a period of total incapacity,

the latter period shall be deducted from the maximum period herein allowed for partial incapacity. However, the employer shall not be required to pay, or cause to be paid, compensation under this section to any injured employee not eligible for lawful employment; nor shall any such injured employee not eligible for lawful employment who is partially incapacitated be entitled during partial incapacity to receive temporary total benefits under § 65.2-500.

B. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

C. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program as defined in subdivision s of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

D. Temporary Assistance for Needy Families recipients participating in the work experience component of the Virginia Initiative for Education and Work as defined in subdivision t of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

Code 1950, § 65-52; 1952, c. 226; 1954, c. 654; 1956, c. 243; 1958, c. 568; 1960, c. 556; 1962, c. 503; 1964, c. 94; 1966, c. 64; 1968, cc. 8, 660, § 65.1-55; 1970, c. 470; 1972, c. 229; 1973, c. 542; 1974, c. 560; 1975, c. 447; 1990, c. 559; 1991, c. 355; 1995, c. 319; 1997, c. 511; 2000, c. 1018; 2004, c. 888; 2005, c. 472; 2006, c. 660; 2019, c. 210.

§ 65.2-503. Permanent loss.

A. Compensation for permanent partial and permanent total loss and disfigurement shall be awarded as provided in this section.

B. The following losses shall be compensated for the period specified at the rate of 66 2/3 percent of the average weekly wage as defined in § 65.2-101:

Loss	Compensation Period
1. Thumb	60 weeks.
2. First finger (index finger)	35 weeks.
3. Second finger	30 weeks.
4. Third finger	20 weeks.
5. Fourth finger (little finger)	15 weeks.
6. First phalanx of the thumb or any finger	one-half compensation for loss of entire thumb or finger.

The loss of more than one phalanx of a thumb or finger is deemed the loss

of the entire thumb or finger. Amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand.	
7. Great toe	30 weeks.
8. A toe other than a great toe	10 weeks.
9. First phalanx of any toe	one-half compensation for loss of entire toe.
The loss of more than one phalanx of a toe is deemed the loss of the entire toe.	
10. Hand	150 weeks.
11. Arm	200 weeks.
12. Foot	125 weeks.
13. Leg	175 weeks.
14. Permanent total loss of the vision of an eye	100 weeks.
15. Permanent total loss of hearing of an ear	50 weeks.
16. Severely marked disfigurement of the body resulting from an injury not otherwise compensated by this section	not exceeding 60 weeks.
17. Pneumoconiosis, including but not limited to silicosis and asbestosis, medically determined to be in the	
a. First stage	50 weeks.
b. Second stage	100 weeks.
c. Third stage	300 weeks.
18. Byssinosis	50 weeks.

C. Compensation shall be awarded pursuant to § 65.2-500 for permanent and total incapacity when there is:

1. Loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof either from the same accident or a compensable consequence of an injury sustained in the original accident;

2. Injury for all practical purposes resulting in total paralysis, as determined by the Commission based on medical evidence; or

3. Injury to the brain which is so severe as to render the employee permanently unemployable in gainful employment.

D. In construing this section, the permanent loss of the use of a member shall be equivalent to the loss of such member, and for the permanent partial loss or loss of use of a member, compensation may be proportionately awarded. Compensation shall also be awarded proportionately for partial loss of vision or hearing.

E. Except as provided in subsection C, the weekly compensation payments referred to in this section shall be subject to the same limitations as to maximum and minimum as set out in § 65.2-500.

1. Compensation awarded pursuant to this section shall be payable after payments for temporary total incapacity pursuant to § 65.2-500.

2. Compensation pursuant to this section may be paid simultaneously with payments for partial incapacity pursuant to § 65.2-502. Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two weeks against the total maximum allowable period of 500 weeks.

Code 1950, § 65-53; 1964, cc. 116, 190; 1968, cc. 347, 660, § 65.1-56; 1970, c. 470; 1972, c. 229; 1975, cc. 446, 450; 1976, c. 655; 1982, c. 326; 1983, c. 287; 1987, c. 560; 1988, cc. 564, 596; 1991, c. 355; 1997, c. 511; 2000, c. 520; 2022, c. 530.

§ 65.2-504. Compensation for disability from coal worker's pneumoconiosis; insurance of coal operator.

A. An employee eligible for an award for coal worker's pneumoconiosis benefits shall be compensated according to the following schedule:

1. For first stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under the current International Labour Office Classification of Radiographs of the Pneumoconioses where there is no present impairment for work, 66 2/3 percent of the average weekly wage as defined in § 65.2-101, for fifty weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

2. For second stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under the current International Labour Office Classification of Radiographs of the Pneumoconioses where there is no present impairment for work, 66 2/3 percent of the average weekly wage as defined in § 65.2-101 for 100 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

3. For third stage coal worker's pneumoconiosis medically determined from radiographic evidence and classified under the current International Labour Office Classification of Radiographs of the Pneumoconioses and involving progressive massive fibrosis or medically classified as being A, B or C under the International Labour Office (hereafter referred to as I.L.O.) classifications but where there is no apparent impairment for work, 66 2/3 percent of the average weekly wage as defined in § 65.2-101, for 300 weeks, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500.

4. For coal worker's pneumoconiosis medically determined to be A, B or C under the I.L.O. classifications or which involves progressive massive fibrosis, or for any stage of coal worker's pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved medical tests and standards to render an employee totally unable to do manual labor in a dusty environment and the employee is instructed by competent medical authority not to attempt to do work in any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a permanent disability and he shall receive 66 2/3 percent of his average weekly wage as defined in § 65.2-101 during

the three years prior to the date of filing of the claim, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 for his lifetime without limit as to the total amount.

B. In any case where partial disability as mentioned in subsection A of this section later results in total disability, the employer shall receive credit on any permanent disability payments by being allowed to deduct 25 percent of each weekly payment until payments for partial disability hereunder have been fully accounted for.

C. In any case where there is a question of whether a claimant with pneumoconiosis is suffering from coal worker's pneumoconiosis or from some other type of pneumoconiosis such as silicosis, it shall be conclusively presumed that he is suffering from coal worker's pneumoconiosis if he has had injurious exposure to coal dust.

D. In the event that any coal operator wishes to insure himself under standard workers' compensation insurance rather than be self-insured against the risks and liabilities imposed by this section or by § 65.2-513, any such insurance issued in this Commonwealth covering such risks shall be rated separately for premium purposes and shall not affect workers' compensation rates for any other employers not exposed to such risks.

E. All members of any panel or committee required to interpret or classify a chest roentgenogram for purposes of diagnosing a coal worker's pneumoconiosis shall be B-readers approved by the National Institute for Occupational Safety and Health.

1972, c. 619, § 65.1-56.1; 1973, c. 436; 1974, cc. 201, 560; 1975, c. 447; 1990, c. 610; 1991, c. 355; 2000, cc. 408, 520; 2011, c. 513.

§ 65.2-505. Injuries in different employments; injury to employee with disability; subsequent permanent injury by accident in service to employer.

A. Except for hearing or vision loss that has not reached a compensable level of disability, if an employee has a permanent disability or has sustained a permanent injury in service in the armed forces of the United States or in another employment other than that in which he receives a subsequent permanent injury by accident, such as specified in § 65.2-503, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.

B. Except for hearing or vision loss that has not reached a compensable level of disability, if an employee has a permanent disability or has sustained a permanent injury in service to his employer and receives a subsequent permanent injury by accident, such as specified in § 65.2-503, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.

Code 1950, § 65-55; 1968, c. 660, § 65.1-58; 1991, c. 355; 1996, c. 448.

§ 65.2-506. Compensation after second injury in same employment.

If an employee receives an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, but if he is, at the time of the second injury, receiving compensation under the provisions of § 65.2-503, payments of compensation thereunder shall be suspended during the period compensation is paid on account of the second injury, and after the termination of payments of compensation for the second injury, payments on account of the first injury shall be resumed and continued until the entire amount originally awarded has been paid. However, if, at the time of the second injury, he is receiving compensation under the provisions of § 65.2-502, then no compensation shall be payable on account of the first injury during the period he receives compensation for the second injury.

Code 1950, § 65-56; 1968, c. 660, § 65.1-59; 1991, c. 355.

§ 65.2-507. Same employment; when both injuries permanent.

If an employee receives a permanent injury as specified in § 65.2-503, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

Code 1950, § 65-57; 1968, c. 660, § 65.1-60; 1972, c. 619; 1991, c. 355.

§ 65.2-508. Foreign injuries.

A. When an accident happens while the employee is employed elsewhere than in this Commonwealth which would entitle him or his dependents to compensation if it had happened in this Commonwealth, the employee or his dependents shall be entitled to compensation, if:

1. The contract of employment was made in this Commonwealth; and

2. The employer's place of business is in this Commonwealth;

provided the contract of employment was not expressly for service exclusively outside of the Commonwealth.

B. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this title.

Code 1950, § 65-58; 1968, c. 660, § 65.1-61; 1976, c. 151; 1991, c. 355.

§ 65.2-509. Commencement of compensation.

No compensation shall be allowed for the first seven calendar days of incapacity resulting from an injury except the benefits provided for in § 65.2-603; but if incapacity extends beyond that period, compensation shall commence with the eighth day of disability. If, however, such incapacity shall continue for a period of more than three weeks, then compensation shall be allowed from the first day of such incapacity.

Code 1950, § 65-59; 1968, c. 660, § 65.1-62; 1976, c. 165; 1991, c. 355.

§ 65.2-510. Refusal of employment; compensation for partial incapacity.

A. If an injured employee refuses employment procured for him suitable to his capacity, he shall only be entitled to the benefits provided for in §§ 65.2-503 and 65.2-603, excluding vocational rehabilitation services provided for in subdivision A 3 of § 65.2-603, during the continuance of such refusal, unless in the opinion of the Commission such refusal was justified.

B. If an injured employee cures his unjustified refusal by accepting employment suitable to his capacity at a wage less than that originally offered, the employer shall pay or cause to be paid to the injured employee during his partial incapacity pursuant to § 65.2-502, a weekly compensation equal to 66 2/3 percent of the difference between his average weekly wages before his injury and the average weekly wage the employee would have earned by accepting the original proffered light duty employment.

C. A cure of unjustified refusal pursuant to subsection A may not be established if the unjustified refusal lasts more than six months from the last day for which compensation was paid before suspension pursuant to this section; however, the six-month period may be extended by the number of days a claimant is totally disabled if the disability commenced during such six-month period. When an injured employee is precluded from accepting employment as a result of pregnancy, the six-month period for curing the refusal may be tolled during such period as a physician certifies medical disability.

Code 1950, § 65-60; 1968, c. 660, § 65.1-63; 1991, c. 355; 1995, c. 319; 1996, c. 252.

§ 65.2-510.1. Employee imprisonment; suspension of benefits.

A. Whenever an employee is imprisoned in a jail, state correctional facility, or any other place of incarceration and (i) the imprisonment resulted from the employee's conviction of a criminal offense and followed his sentencing therefor by a court of competent jurisdiction, (ii) the employee is receiving compensation for temporary total incapacity pursuant to § 65.2-500 or temporary partial incapacity under § 65.2-502, and (iii) the employee is medically released to perform selective employment, compensation benefits for wage loss shall be suspended under § 65.2-708 upon filing of a proper application to the Commission.

B. If benefits are suspended for incarceration pursuant to this section and the employee's conviction is subsequently reversed on appeal and no further appeals or prosecutions concerning such prior conviction are had, the employee's benefits shall be restored under § 65.2-708 upon filing of a proper application to the Commission.

C. The provisions of this section shall only apply to an employee who receives a workers' compensation award after July 1, 1992.

1992, c. 466.

§ 65.2-511. Compensation to employee's distributees upon his death from any other cause.

When an employee receives or is entitled to compensation under this title for an injury covered by § 65.2-503 and dies from a cause other than the injury for which he was entitled to compensation,

payment of the unpaid balance of compensation shall be made to his statutory dependents under this chapter, in lieu of the compensation the employee would have been entitled to had he lived. However, if the death is due to a cause that is compensable under this title and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall terminate.

Code 1950, § 65-61; 1968, c. 660, § 65.1-64; 1991, c. 355.

§ 65.2-512. Compensation to dependents of an employee killed; burial expenses.

A. Except as provided in subsections F, G and H, if death results from the accident within nine years, the employer shall pay, or cause to be paid, compensation in weekly payments equal to 66 and two-thirds percent of the employee's average weekly wages, but not more than 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 nor less than 25 percent of the average weekly wage as defined therein:

1. To those persons presumed to be wholly dependent upon the deceased employee as set forth in subdivisions A 1 and 2 of § 65.2-515, for a period of 500 weeks from the date of injury; or

2. If there are no total dependents pursuant to subdivision A 1 or 2 of § 65.2-515, to those persons presumed to be wholly dependent as set forth in subdivision A 3 of § 65.2-515, and to those determined to be wholly dependent in fact, for a period of 400 weeks from the date of injury; or

3. If there are no total dependents, to partial dependents in fact, for a period of 400 weeks from the date of injury.

B. The employer shall also pay burial expenses not exceeding $10,000 and reasonable transportation expenses for the deceased not exceeding $1,000.

C. Benefits shall be divided equally among total dependents, to the exclusion of partial dependents. If there are no total dependents, benefits shall be divided among partial dependents according to the dependency of each upon the earnings of the employee at the time of the injury, in the proportion that partial dependency bears to total dependency.

D. If benefits are terminated as to any member of a class herein, that member's share shall be divided among the remaining members of the class proportionately according to their dependency.

E. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments but shall not continue for a period longer than specified in subsection A.

F. No benefits shall be paid pursuant to this section to the dependents of an AmeriCorps member as defined in subdivision 1 r of the definition of "employee" in § 65.2-101.

G. No benefits shall be paid pursuant to subsection A, C, D, or E to the dependents of a Food Stamp recipient participating in the work experience component of the Food Stamp Employment and Training Program as defined in subdivision 1 s of the definition of "employee" in § 65.2-101.

H. No benefits shall be paid pursuant to subsection A, C, D, or E to the dependents of a Temporary Assistance for Needy Families recipient participating in the work experience component of the Virginia Initiative for Education and Work as defined in subdivision 1 t of the definition of "employee" in § 65.2-101.

Code 1950, §§ 65-62, 65-65, 65-67; 1952, c. 226; 1954, c. 654; 1956, c. 243; 1958, c. 568; 1960, c. 556; 1962, c. 503; 1964, c. 94; 1966, c. 64; 1968, cc. 8, 660, §§ 65.1-65, 65.1-68, 65.1-70; 1970, cc. 470, 643; 1972, c. 229; 1973, cc. 401, 542; 1974, c. 560; 1975, c. 447; 1976, c. 166; 1981, c. 247; 1984, c. 409; 1985, c. 35; 1991, c. 355; 1992, cc. 2, 147; 1998, c. 100; 2004, c. 888; 2005, c. 472; 2019, c. 210; 2020, c. 900.

§ 65.2-513. Compensation for death from coal worker's pneumoconiosis; determining whether death was due to pneumoconiosis or any chronic occupational lung disease.

A. If death results from coal worker's pneumoconiosis or if the employee was totally disabled by coal worker's pneumoconiosis at the time of his death and claim for compensation is made within three years after such death, the employer shall pay or cause to be paid to the surviving spouse of the deceased employee until his death or remarriage or the minor dependents of the employee until such minor dependents reach the age of eighteen (or twenty-three, so long as they remain as full-time students in a generally accredited institution of learning) or such other legal dependents as the deceased employee might have had at the time of his death for the duration of such dependency, 66 2/3 percent of the employee's average weekly wage during the last three years that he worked in the coal mines, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 without any specific limit as to the number of such weeks. However, any claim for compensation of an employee who was totally disabled by coal worker's pneumoconiosis at the time of his death shall be paid only to the extent required by federal law.

B. The Commission shall, by regulation duly drawn and published after notice and hearing, prescribe standards, not inconsistent with those prescribed by the Secretary of Health and Human Services under the 1969 Federal Coal Mine Health and Safety Act, as amended, for determining whether the death or total disability of an employee was due to pneumoconiosis or any chronic occupational lung disease.

C. In prescribing such standards the following factors shall be included:

1. If an employee who died from a respirable (respiratory) disease was employed for ten years or more in an environment where he was injuriously exposed to such a disease, there shall be a rebuttable presumption that his disease arose out of such employment, or if he became totally disabled from coal worker's pneumoconiosis or if such disease significantly contributed to his death or disability, there shall be a rebuttable presumption that his death or disability was due to such disease.

2. Where there is clear evidence of exposure to an occupational lung disease, the Commission may make its determination whether compensation is payable to the dependents based on the description of the employee's symptoms, X-rays, and other competent medical evidence, and the opinion of

experts as to whether those symptoms reasonably described the symptoms of such an occupational disease.

3. The statement as to the cause of death on a death certificate may be considered as evidence in any such cases but shall not be controlling on the Commission's findings. The Commission may also, by regulation, establish standards, not inconsistent with those prescribed by the Secretary of Labor under the 1969 Federal Coal Mine Health and Safety Act as amended, for apportioning liability for benefits under this section and under § 65.2-504 A 4 among more than one operator, where such apportionment is appropriate, provided that no apportionment shall operate to deprive an employee of the full benefits due him under this title.

1972, c. 619, § 65.1-65.1; 1973, cc. 401, 436; 1974, c. 560; 1975, c. 447; 1991, c. 355.

§ 65.2-514. Special provisions for coal worker's pneumoconiosis claims for total disability or death.
In the case of claims for death or total disability under subdivision A 4 of § 65.2-504 or § 65.2-513, the following matters shall be required or effective only to the extent that they are allowed by the 1969 Federal Coal Mine Health and Safety Act as amended and the regulations issued thereunder:

1. Notice to the employer under § 65.2-405;

2. Any limitation for the filing of a claim for benefits for death or total disability under §§ 65.2-406 and 65.2-601;

3. Waivers as provided under § 65.2-407;

4. Settlements agreed to, allowed, or granted under § 65.2-701; and

5. The right of an employer to refuse employment to an applicant or to discharge a claimant because he has or is susceptible to coal worker's pneumoconiosis.

1973, c. 436, § 65.1-65.2; 1991, c. 355.

§ 65.2-515. Persons conclusively presumed to be wholly dependent.
A. The following persons shall be conclusively presumed to be dependents wholly dependent for support upon the deceased employee:

1. A spouse upon his deceased spouse whom he had not voluntarily deserted at the time of the accident or with whom he lived at the time of the accident, if he is then actually dependent upon his deceased spouse;

2. A child under the age of 18 upon a parent and a child over such age if physically or mentally incapacitated from earning a livelihood or a child under the age of 23 if enrolled as a full-time student in any accredited educational institution; and

3. Parents in destitute circumstances, provided that there are no total dependents pursuant to other provisions of this section.

B. As used in this section, "child" includes a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but does not include a married child, and "parent" includes stepparents and parents by adoption.

Code 1950, § 65-63; 1968, c. 660, § 65.1-66; 1973, cc. 401, 542; 1991, c. 355; 2020, c. 900.

§ 65.2-516. Other cases of dependency.

In all other cases questions of dependency in whole or in part shall be determined in accordance with the facts as the facts are at the time of the accident; but no allowance shall be made for any payment made in lieu of board and lodging or services and no compensation shall be allowed unless the dependency existed for a period of three months or more prior to the accident.

Code 1950, § 65-64; 1968, c. 660, § 65.1-67; 1991, c. 355.

§ 65.2-517. Termination of dependency.

For the purpose of this title, the dependence of a widow or widower of a deceased employee shall terminate with death or remarriage, and the amount to be theretofore received by him or her shall be divided among the children or other dependents in the proportion of which they are receiving compensation, and the dependence of a child or any minor dependent, except a child or minor dependent physically or mentally incapacitated from earning a livelihood, or a full-time student, as defined in § 65.2-515, shall terminate with the attainment of eighteen years of age.

Code 1950, § 65-66; 1960, c. 298; 1968, c. 660, § 65.1-69; 1973, cc. 401, 542; 1991, c. 355.

§ 65.2-518. Limitation upon total compensation.

The total compensation payable under this title shall in no case be greater than 500 weeks nor shall it exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined in § 65.2-500 for the applicable year by 500, except in cases of permanent and total incapacity as defined in § 65.2-503 C and in cases of permanent disability under subdivision A 4 of § 65.2-504 and death from coal worker's pneumoconiosis under § 65.2-513.

Code 1950, § 65-68; 1952, c. 226; 1954, c. 654; 1956, c. 243; 1958, c. 568; 1960, c. 556; 1964, c. 94; 1966, c. 64; 1968, cc. 8, 660, § 65.1-71; 1970, c. 470; 1972, c. 229; 1973, c. 542; 1974, c. 560; 1975, c. 447; 1991, c. 355; 1997, c. 511.

§ 65.2-519. When limitations inapplicable to injuries arising out of pneumoconiosis.

The limitations as to the maximum periods and maximum total amounts listed in §§ 65.2-500, 65.2-512, and 65.2-518 shall not apply to injuries arising out of pneumoconiosis.

1972, c. 615, § 65.1-71.1; 1991, c. 355.

§ 65.2-520. Voluntary payment by employer.

Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made, may, subject to the approval of the Commission, be deducted from the amount to be paid as compensation, provided that, in the case of disability, such deductions shall be made by reducing the amount of the weekly

payment in an amount not to exceed one-fourth of the amount of the weekly payment for as long as is necessary for the employer to recover his voluntary payment. However, any payments made to an injured employee under the Longshore and Harbor Workers' Compensation Act of 1927, as amended, 33 U.S.C. § 901 et seq., may be deducted in full from the amount to be paid as compensation for the same injury under this title.

Code 1950, § 65-69; 1968, c. 660, § 65.1-72; 1991, c. 355; 1998, c. 68; 2007, c. 356.

§ 65.2-521. Time of payment.

The Commission, upon application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid bi-weekly, monthly, or quarterly instead of weekly.

Code 1950, § 65-70; 1968, c. 660, § 65.1-73; 1991, c. 355.

§ 65.2-522. Lump sum payments, generally.

When the parties agree and the Commission deems it to be to the best interests of the employee or his dependents, or when it will prevent undue hardships on the employer, or his insurance carrier, without prejudicing the interests of the employee or his dependents, liability for compensation may be redeemed, in whole or in part, through payment by the employer of a lump sum which shall be fixed by the Commission, but in no case shall the sum awarded be less than a sum equal to the present value of future compensation payments commuted, computed at four percent true discount compounded annually.

Code 1950, § 65-71; 1968, c. 660, § 65.1-74; 1972, c. 619; 1973, c. 401; 1991, c. 355.

§ 65.2-523. Lump sum payments to trustees.

Whenever the Commission deems it expedient, any lump sum subject to the provisions of § 65.2-522 shall be paid by the employer to some suitable person or corporation appointed by the circuit court in the county or city wherein the accident occurred, or by such other circuit court as may be designated by the Commission as more compatible with the interests and convenience of the beneficiaries, as trustee or guardian, to administer the same for the benefit of the person entitled hereto in the manner provided by the Commission. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Code 1950, § 65-72; 1968, c. 660, § 65.1-75; 1991, c. 355.

§ 65.2-524. Failure to pay compensation within two weeks after it becomes due.

If any payment is not paid within two weeks after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 percent thereof, unless the Commission finds that any required payment has been made as promptly as practicable and (i) there is good cause outside the control of the employer for the delay or (ii) in the case of a self-insured employer, the employer has issued the required payment to the employee as a part of the next regular payroll after the payment becomes due. No such penalty shall be added, however, to any payment made within two weeks after the expiration of (a) the period in which Commission review may be requested pursuant to § 65.2-705 or (b) the

period in which a notice of appeal may be filed pursuant to § 65.2-706. No penalty shall be assessed against the Commonwealth when the Commonwealth has issued a regular payroll payment to the employee in lieu of compensation covering the period of disability. As used in this section, a regular payroll payment issued by the Commonwealth includes payments issued net of deductions for elected and mandatory benefits and other standard deductions.

1970, c. 470, § 65.1-75.1; 1991, c. 355; 1994, c. 248; 1997, c. 383; 1999, c. 782; 2012, c. 270.

§ 65.2-525. Who may receive payment and receipt therefor.

A. Whenever payment of compensation is made to a surviving spouse or parent for his use, or for his use and the use of a minor child, or the use of a minor child and such payments are made in the form of periodic weekly, monthly or quarterly payments, the written receipt thereof of such surviving spouse or parent shall acquit the employer. The Commission, however, may require annual written certifications from the surviving spouse or parent confirming that the portion of such payments for the benefit of the minor child has been used for the benefit of such minor child.

B. Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer. If a minor shall be entitled to receive a lump sum payment amounting to not more than $15,000 as compensation for injuries, or as a distributive share by virtue of this title, the parent or natural guardian upon whom such minor shall be dependent for support shall be authorized and empowered to receive and give receipt for such moneys to the same extent as a guardian of the person and property of such minor duly appointed by proper court, and the release or discharge of such parent or natural guardian shall be a full and complete discharge of all claims or demands of such minor thereunder.

C. Whenever any lump sum payment greater than $15,000 is due to a minor or to an incapacitated person as defined in § 64.2-2000, the same shall be made to the guardian of the property of such minor or the conservator of such incapacitated adult or, if there is none, to some suitable person or corporation appointed by the circuit court as a trustee, and the receipt of such trustee shall acquit the employer.

Code 1950, § 65-73; 1968, c. 660, § 65.1-76; 1972, c. 825; 1973, c. 401; 1991, c. 355; 1997, c. 921; 1998, c. 94; 2002, c. 301.

§ 65.2-526. Payment to junior dependents in good faith.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the Commission to decide between them.

Code 1950, § 65-74; 1968, c. 660, § 65.1-77; 1991, c. 355.

§ 65.2-527. When employee's rights exercised by guardian or trustee.

If an injured employee is incapacitated or is under eighteen years of age at the time when any right or privilege accrues to him under this title, his guardian, trustee or conservator may in his behalf claim and exercise such right or privilege.

Code 1950, § 65-75; 1968, c. 660, § 65.1-78; 1991, c. 355; 1997, c. 801.

§ 65.2-528. Time limitations on persons under disability.

No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is incapacitated or under eighteen years of age, so long as he has no guardian, trustee, or conservator.

Code 1950, § 65-76; 1968, c. 660, § 65.1-79; 1991, c. 355; 1997, c. 801.

§ 65.2-529. Joint service.

Whenever any employee for whose injury or death compensation is payable under this title shall at the time of the injury be in the joint service of two or more employers subject to this title, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employee. However, nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

Code 1950, § 65-77; 1968, c. 660, § 65.1-80; 1991, c. 355.

§ 65.2-530. Preferences and priorities.

All rights of compensation granted by this title shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Code 1950, § 65-78; 1968, c. 660, § 65.1-81; 1991, c. 355.

§ 65.2-531. Assignments of compensation; exemption from creditors' claims.

A. No claim for compensation under this title shall be assignable. All compensation and claims therefor shall be exempt from all claims of creditors, even if the compensation is used for purchase of shares in a credit union, or deposited into an account with a financial institution or other organization accepting deposits and is thereby commingled with other funds. However, benefits paid in compensation or in compromise of a claim for compensation under this title shall be subject to claims for spousal and child support subject to the same exemptions allowed for earnings in § 34-29.

B. Upon an order of garnishment, attachment or other levy addressed to a financial institution in which the principal defendant claims to have exempt funds hereunder, the principal defendant may file an answer asserting the exemption hereunder. From the time of service of such garnishment, attachment or levy, the financial institution, until further order of the court, shall hold the amount subject to such garnishment, attachment or levy, or such lesser amount or sum as it may have, which amount shall be set forth in its answer. It shall hold such amount free of any person drawing against such funds whether by check against such account or otherwise. The financial institution shall be subject to such further order or subpoena for discovery of its records, for which it shall be entitled an order or agreement for compensation for the expense of such service, and in a case deemed appropriate to the court

by such an order directing deposit of funds or further security prior to such records being ordered produced.

Code 1950, § 65-79; 1968, c. 660, § 65.1-82; 1987, c. 331; 1990, c. 747; 1991, c. 355; 1997, cc. 796, 895.

Chapter 6 - Notice of Accident; Filing Claims; Medical Attention and Examination

§ 65.2-600. Notice of accident.

A. Every injured employee or his representative shall immediately on the occurrence of an accident or as soon thereafter as practicable, give or cause to be given to the employer a written notice of the accident. If notice of accident is not given to any statutory employer, such statutory employer may be held responsible for initial and additional awards of compensation rendered by the Commission if (i) he shall have had at least sixty days' notice of the hearing to ascertain compensability of the accident, and (ii) the statutory employer was not prejudiced by lack of notice of the accident.

B. The notice shall state the name and address of the employee, the time and place of the accident, and the nature and cause of the accident and the injury.

C. The employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent or representative had knowledge of the accident or that the party required to give notice had been prevented from giving notice by reason of physical or mental incapacity or the fraud or deceit of some third person.

D. No compensation or medical benefit shall be payable unless such written notice is given within thirty days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

E. No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby and then only to such extent as the prejudice.

Code 1950, §§ 65-82, 65-83; 1968, c. 660, §§ 65.1-85, 65.1-86; 1991, c. 355; 1997, c. 288.

§ 65.2-601. Time for filing claim.

The right to compensation under this title shall be forever barred, unless a claim be filed with the Commission within two years after the accident. Death benefits payable under this title shall be payable only if: (i) death results from the accident, (ii) a claim for benefits under this title has been filed within two years after the accident, and (iii) the claim for such death benefits is filed within two years from the date of death.

Code 1950, § 65-84; 1968, c. 660, § 65.1-87; 1975, c. 471; 1984, c. 231; 1991, c. 355.

§ 65.2-601.1. Effect of filing claim; stay of debt collection activities by health care providers.

A. Whenever an employee makes a claim pursuant to § 65.2-601, all health care providers, as defined in § 8.01-581.1, shall refrain from all debt collection activities relating to medical treatment received by the employee in connection with such claim until an award is made on the employee's claim pursuant to § 65.2-704. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities here-under.

B. For the purpose of this section, "debt collection activities" means repeatedly calling or writing to the employee and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of other process. The term shall not include routine billing or inquiries about the status of the claim.

1994, c. 462.

§ 65.2-601.2. Notice to employee of employer's intent.

A. Whenever an employee makes a claim pursuant to § 65.2-601, the Commission shall order the employer to advise the employee, within 30 days following the date of such order, whether the employer (i) intends to accept the claim, (ii) intends to deny the claim, or (iii) is unable to determine whether it intends to accept or deny the claim because the employer lacks sufficient information from the employee or a third party to make such determination. If the employer responds that it intends to deny the claim, the response shall provide reasons therefor. If the employer responds that it is unable to determine whether it intends to accept or deny the claim because it lacks sufficient information from the employee or a third party to make such determination, the response shall identify the additional information that the employer needs from the employee or a third party in order to make such determ-ination.

B. The employer's response to the order shall be considered a required report for the purposes of § 65.2-902.

C. The employer's response to the order shall not be considered part of the hearing record.

D. An employer may, if the employee consents, send any response required by this section to the employee by email.

2020, c. 1086.

§ 65.2-602. Tolling of statute of limitations.

In any case where an employer has received notice of an accident resulting in compensable injury to an employee as required by § 65.2-600 and, whether or not an award has been entered, the employer has paid compensation or wages to such employee during incapacity for work, as defined in § 65.2-500 or 65.2-502, resulting from such injury or the employer has failed to file the report of said accident with the Virginia Workers' Compensation Commission as required by § 65.2-900, or otherwise has under a workers' compensation plan or insurance policy furnished or caused to be furnished medical service to such employee as required by § 65.2-603, the statute of limitations applicable to the filing of a claim shall be tolled until the last day for which such payment of compensation or wages or

furnishment of medical services as described above is provided and that occurs more than six months after the date of accident. However, no such payment of wages or workers' compensation benefits or furnishment of medical service as described above occurring after the expiration of the statute of limitations shall apply to this provision. In the case where the employer has failed to file a first report, the statute of limitations shall be tolled during the duration thereof until the employer filed the first report of accident as required by § 65.2-900. In the event that more than one of the above tolling provisions applies, whichever of those causes the longer period of tolling shall apply.

1984, c. 608, § 65.1-87.1; 1989, c. 539; 1991, cc. 216, 355; 2019, c. 470.

§ 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of refusal of employee to accept.

A. Pursuant to this section:

1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and such other necessary medical attention. Where such accident results in the amputation or loss of use of an arm, hand, leg, or foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall furnish prosthetic or orthotic appliances, as well as wheelchairs, scooters, walkers, canes, or crutches, proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may require.

In awards entered for incapacity for work, under this title, upon determination by the treating physician and the Commission that the same is medically necessary, the Commission may:

a. Require that the employer either (i) furnish and maintain modifications to or equipment for the employee's automobile or (ii) if there is a loss of function to either or both feet, legs, hands, or arms and if the Commission determines that modifications to or equipment for the employee's automobile pursuant to clause (i) are not technically feasible, will not render the automobile operable by the employee, or will cost more than is available for such purpose after payment for any items provided under subdivision b, order that the balance of funds available under the aggregate cap of $55,000 be applied towards the purchase by the employee of a suitable automobile or to furnish or maintain modifications to such automobile; and

b. Require that the employer furnish and maintain bedside lifts, adjustable beds, and modification of the employee's principal home consisting of ramps, handrails, doorway alterations, or any appliances prescribed by the treating physician, except for appliances or medical equipment required to be furnished by the employer pursuant to subdivision A 1.

The aggregate cost of all such items and modifications required to be furnished pursuant to subdivisions a and b on account of any one accident shall not exceed $55,000. This limit shall be increased on an annual basis at the same rate as provided in subsection C of § 65.2-709.

The employee shall accept the attending physician, unless otherwise ordered by the Commission, and in addition, such surgical and hospital service and supplies as may be deemed necessary by the attending physician or the Commission.

2. The employer shall repair, if repairable, or replace dentures, artificial limbs, or other prosthetic or orthotic devices damaged in an accident otherwise compensable under workers' compensation, and furnish proper fitting thereof.

3. The employer shall also furnish or cause to be furnished, at the direction of the Commission, reasonable and necessary vocational rehabilitation services; however, the employer shall not be required to furnish, or cause to be furnished, services under this subdivision to any injured employee not eligible for lawful employment.

Vocational rehabilitation services may include vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining. Those vocational rehabilitation services that involve the exercise of professional judgment as defined in § 54.1-3510 shall be provided by a certified rehabilitation provider pursuant to Article 2 (§ 54.1-3510 et seq.) of Chapter 35 of Title 54.1 or by a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; Psychology; or Social Work or, in accordance with subsection B of § 54.1-3513, by a person certified by the Commission on Rehabilitation Counselor Certification (CRCC) as a certified rehabilitation counselor (CRC) or a person certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as a Certified Vocational Evaluation Specialist (CVE).

In the event a dispute arises, any party may request a hearing and seek the approval of the Commission for the proposed services. Such services shall take into account the employee's preinjury job and wage classifications; his age, aptitude, and level of education; the likelihood of success in the new vocation; and the relative costs and benefits to be derived from such services.

B. The unjustified refusal of the employee to accept such medical service or vocational rehabilitation services when provided by the employer shall bar the employee from further compensation until such refusal ceases and no compensation shall at any time be paid for the period of suspension unless, in the opinion of the Commission, the circumstances justified the refusal. In any such case the Commission may order a change in the medical or hospital service or vocational rehabilitation services.

C. If in an emergency or on account of the employer's failure to provide the medical care during the period herein specified, or for other good reasons, a physician other than provided by the employer is called to treat the injured employee, during such period, the reasonable cost of such service shall be paid by the employer if ordered so to do by the Commission.

D. As used in this section and in § 65.2-604, the terms "medical attention," "medical service," "medical care," and "medical report" shall be deemed to include chiropractic service or treatment and, where appropriate, a chiropractic treatment report.

E. Whenever an employer furnishes an employee the names of three physicians pursuant to this section, and the employer also assumes all or part of the cost of providing health care coverage for the employee as a self-insured or under a group health insurance policy, health services plan or health care plan, upon the request of an employee, the employer shall also inform the employee whether each physician named is eligible to receive payment under the employee's health care coverage provided by the employer.

F. If the injured employee has an injury which may be treated within the scope of practice for a chiropractor, then the employer or insurer may include chiropractors on the panel provided the injured employee.

Code 1950, § 65-85; 1952, c. 385; 1960, cc. 310, 444, 580; 1964, c. 366; 1966, c. 388; 1968, cc. 377, 660, § 65.1-88; 1970, c. 470; 1972, c. 229; 1973, c. 542; 1975, c. 280; 1980, c. 600; 1982, c. 585; 1983, c. 471; 1987, cc. 455, 475; 1989, c. 540; 1990, c. 789; 1991, cc. 275, 355, 376; 1994, c. 558; 1997, c. 839; 1998, c. 65; 1999, c. 780; 2000, cc. 473, 1018; 2004, c. 271; 2011, c. 656; 2017, c. 491; 2022, c. 213.

§ 65.2-603.1. Use of therapeutically equivalent drug products required.

A. As used in this section, "therapeutically equivalent drug products" means drug products that (i) contain the same active ingredients, (ii) are identical in strength or concentration, dosage form, and route of administration, and (iii) are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of Approved Drug Products with Therapeutic Equivalence Evaluations, known as the Orange Book.

B. Notwithstanding the provisions of § 54.1-3408.03, and except as provided in subsection C, any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a therapeutically equivalent drug product for the prescribed name-brand drug product. If a therapeutically equivalent drug product does not exist or the usual and customary retail price charged by the pharmacist for the therapeutically equivalent drug product is higher than that of the prescribed name-brand drug product, the pharmacist shall dispense the prescribed name-brand drug product.

C. A prescriber may specify on the prescription "brand medically necessary" if there is a medical reason why the claimant should not have the prescription filled with a therapeutically equivalent drug product. A request by the claimant that a name-brand drug product be prescribed shall not constitute a sufficient reason under this section for the prescriber to specify "brand medically necessary" on the prescription. If the prescriber specifies on the prescription "brand medically necessary," the pharmacist shall fill the prescription with the name-brand drug product prescribed. If the prescriber calls the prescription in to the pharmacy by telephone and verbally tells the pharmacist "brand medically necessary," the pharmacist shall note on the prescription that the prescriber stated "brand medically necessary" and then fill the prescription with the name-brand drug product prescribed. The cost of any medication prescribed by any authorized treating physician and covered pursuant to this section to

treat injuries or diseases that result from a compensable claim shall not be the responsibility of the claimant unless the claimant obtained the prescription through fraud.

D. An act in compliance with the provisions of this section shall not be deemed to be a prohibited act under § 54.1-3457.

2009, cc. 333, 559.

§ 65.2-604. Furnishing copy of medical report.

A. Any health care provider attending an injured employee shall, upon request of the injured employee, employer, insurer, or a certified rehabilitation provider as provided in Article 2 (§ 54.1-3510 et seq.) of Chapter 35 of Title 54.1 providing services to the injured employee, or of any representative thereof, furnish a copy of any medical report to the injured employee, employer, insurer, or a certified rehabilitation provider as provided in Article 2 (§ 54.1-3510 et seq.) of Chapter 35 of Title 54.1 providing services to the injured employee, or to any representative thereof, or to each of them upon request for such medical report.

B. Whenever any health care provider attending an injured employee refers the employee or transfers responsibility for his care to another health care provider, the referring or transferring provider, upon receipt of a request therefor, shall promptly transfer or cause to be transferred to the new or succeeding provider, or to the employee or someone acting on behalf of the employee, copies of all diagnostic test results, x-ray photographs, and other medical records pertaining to the employee's injury for which further treatment is to be sought from the succeeding provider.

In the event of such referral or transfer, the succeeding provider, if given any such diagnostic test results, x-ray photographs and other medical records pertaining to the employee's injury which were performed or recorded within the preceding 60 days by a referring or transferring provider, shall not repeat any such diagnostic tests or procedures previously conducted without making a good faith attempt to use them unless there is a medical necessity to do so as certified by a qualified physician on behalf of the succeeding provider. If the succeeding health care provider violates the requirements of this paragraph, such succeeding provider shall not be entitled to compensation or reimbursement from the injured employee's employer or the employer's insurer for any repeated test or procedure not so certified to be medically necessary, nor may the succeeding provider require the employee to bear any cost associated with the repeated test or procedure which would have been the responsibility of the employer or his insurer but for the provisions of this subsection.

C. As used in this section, the term "health care provider" shall have the same meaning as set forth in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section.

1970, c. 470, § 65.1-88.1; 1982, c. 128; 1991, c. 355; 1994, c. 685; 1998, c. 431; 1999, c. 314; 2000, c. 542.

§ 65.2-605. Liability of employer for medical services ordered by Commission; fee schedules for medical services; malpractice; assistants-at-surgery; coding.

A. As used in this section, unless the context requires a different meaning:

"Burn center" means a treatment facility designated as a burn center pursuant to the verification program jointly administered by the American Burn Association and the American College of Surgeons and verified by the Commonwealth.

"Categories of providers of fee scheduled medical services" means:

1. Physicians exclusive of surgeons;

2. Surgeons;

3. Type One teaching hospitals;

4. Hospitals, exclusive of Type One teaching hospitals;

5. Ambulatory surgical centers;

6. Providers of outpatient medical services not covered by subdivision 1, 2, or 5; and

7. Purveyors of miscellaneous items and any other providers not described in subdivisions 1 through 6, as established by the Commission in regulations adopted pursuant to subsection C.

"Codes" means, as applicable, CPT codes, HCPCS codes, DRG classifications, or revenue codes.

"CPT codes" means the medical and surgical identifying codes using the Physicians' Current Procedural Terminology published by the American Medical Association.

"Diagnosis related group" or "DRG" means the system of classifying in-patient hospital stays adopted for use with the Inpatient Prospective Payment System.

"Fee scheduled medical service" means a medical service exclusive of a medical service provided in the treatment of a traumatic injury or serious burn.

"Health Care Common Procedure Coding System codes" or "HCPCS codes" means the medical coding system, including all subsets of codes by alphabetical letter, used to report hospital outpatient and certain physician services as published by the National Uniform Billing Committee, including Temporary National Code (Non-Medicare) S0000-S-9999.

"Level I or Level II trauma center" means a hospital in the Commonwealth designated by the Board of Health as a Level I trauma center or a Level II trauma center pursuant to the Statewide Emergency Medical Services Plan developed in accordance with § 32.1-111.3.

"Medical community" means one of the following six regions of the Commonwealth:

1. Northern region, consisting of the area for which three-digit ZIP code prefixes 201 and 220 through 223 have been assigned by the U.S. Postal Service.

2. Northwest region, consisting of the area for which three-digit ZIP code prefixes 224 through 229 have been assigned by the U.S. Postal Service.

3. Central region, consisting of the area for which three-digit ZIP code prefixes 230, 231, 232, 238, and 239 have been assigned by the U.S. Postal Service.

4. Eastern region, consisting of the area for which three-digit ZIP code prefixes 233 through 237 have been assigned by the U.S. Postal Service.

5. Near Southwest region, consisting of the area for which three-digit ZIP code prefixes 240, 241, 244, and 245 have been assigned by the U.S. Postal Service.

6. Far Southwest region, consisting of the area for which three-digit ZIP code prefixes 242, 243, and 246 have been assigned by the U.S. Postal Service.

The applicable community for providers of medical services rendered in the Commonwealth shall be determined by the zip code of the location where the services were rendered. The applicable community for providers of medical services rendered outside of the Commonwealth shall be determined by the zip code of the principal place of business of the employer if located in the Commonwealth or, if no such location exists, the zip code of the location where the Commission hearing regarding a dispute concerning the services would be conducted.

"Medical service" means any medical, surgical, or hospital service required to be provided to an injured person pursuant to this title.

"Medical service provided for the treatment of a serious burn" includes any professional service rendered during the dates of service of the admission or transfer to a burn center.

"Medical service provided for the treatment of a traumatic injury" includes any professional service rendered during the dates of service of the admission or transfer to a Level I or Level II trauma center.

"Miscellaneous items" means medical services provided under this title that are not included within subdivisions 1 through 6 of the definition of categories of providers of fee scheduled medical services. "Miscellaneous items" does not include (i) pharmaceuticals that are dispensed by providers, other than hospitals or Type One teaching hospitals as part of inpatient or outpatient medical services, or dispensed as part of fee scheduled medical services at an ambulatory surgical center or (ii) durable medical equipment dispensed at retail.

"New type of technology" means an item resulting or derived from an advance in medical technology, including an implantable medical device or an item of medical equipment, that is supplied by a third party, provided that the item has been cleared or approved by the federal Food and Drug Administration (FDA) after the transition date and prior to the date of the provision of the medical service using the item.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Professional service" means any medical or surgical service required to be provided to an injured person pursuant to this title that is provided by a physician or any health care practitioner licensed, accredited, or certified to perform the service consistent with state law.

"Provider" means a person licensed by the Commonwealth to provide a medical service to a claimant under this title.

"Reimbursement objective" means the average of all reimbursements and other amounts paid to providers in the same category of providers of fee scheduled medical services in the same medical community for providing a fee scheduled medical service to a claimant under this title during the most recent period preceding the transition date for which statistically reliable data is available as determined by the Commission.

"Revenue codes" means a method of coding used by hospitals or health care systems to identify the department in which medical service was rendered to the patient or the type of item or equipment used in the delivery of medical services.

"Serious burn" means a burn for which admission or transfer to a burn center is medically necessary.

"Transition date" means the date the regulations of the Commission adopting initial Virginia fee schedules for medical services pursuant to subsection C become effective.

"Traumatic injury" means an injury for which admission or transfer to a Level I or Level II trauma center is medically necessary and that is assigned a DRG number of 003, 004, 011, 012, 013, 025 through 029, 082, 085, 453, 454, 455, 459, 460, 463, 464, 465, 474, 475, 483, 500, 507, 510, 515, 516, 570, 856, 857, 862, 901, 904, 907, 908, 955 through 959, 963, 998, or 999. Claimants who die in an emergency room of trauma or burn before admission shall be deemed to be claimants who incurred a traumatic injury.

"Type One teaching hospital" means a hospital that was a state-owned teaching hospital on January 1, 1996.

"Virginia fee schedule" means a schedule of maximum fees for fee scheduled medical services for the medical community where the fee scheduled medical service is provided, as initially adopted by the Commission pursuant to subsection C and as adjusted as provided in subsection D.

B. The pecuniary liability of the employer for a:

1. Medical, surgical, and hospital service herein required when ordered by the Commission that is provided to an injured person prior to the transition date, regardless of the date of injury, shall be limited absent a contract providing otherwise, to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person. As used in this subdivision, "same community" for providers of medical services rendered outside of the Commonwealth shall be deemed to be the principal place of business of the employer if located in the Commonwealth or, if no such location exists, the location where the Commission hearing regarding the dispute is conducted;

2. Fee scheduled medical service provided on or after the transition date, regardless of the date of injury, shall be limited to:

a. The amount provided for the payment for the fee scheduled medical service as set forth in a contract under which the provider has agreed to accept a specified amount in payment for the service provided, which amount may be less than or exceed the maximum amount for the service as set forth in the applicable Virginia fee schedule;

b. In the absence of a contract described in subdivision 2 a, the lesser of the billing amount or the amount for the fee scheduled medical service as set forth in the applicable Virginia fee schedule that is in effect on the date the service is provided, subject to an increase approved by the Commission pursuant to subsection H; or

c. In the absence of (i) a contract described in subdivision 2 a and (ii) a provision in a Virginia fee schedule that sets forth a maximum amount for the medical service on the date it is provided, the maximum amount determined by the Commission as provided in subsection E; and

3. Medical service provided on or after the transition date for the treatment of a traumatic injury or serious burn, regardless of the date of injury, shall be limited to:

a. The amount provided for the payment for the medical service provided for the treatment of the traumatic injury or serious burn as set forth in a contract under which the provider has agreed to accept a specified amount in payment for the service provided, which amount may be less than or exceed the maximum amount for the service calculated pursuant to subdivision 3 b; or

b. In the absence of a contract described in subdivision 3 a, an amount equal to 80 percent of the provider's charge for the service based on the provider's charge master or schedule of fees; however, if the compensability under this title of a claim for traumatic injury or serious burn is contested and after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third-party insurance carrier or health care provider and the Commission awards to the claimant's attorney a fee pursuant to subsection B of § 65.2-714, then the pecuniary liability of the employer for the service provided shall be limited to 100 percent of the provider's charge for the service based on the provider's charge master or schedule of fees.

C. The Commission shall adopt regulations establishing initial Virginia fee schedules for fee scheduled medical services as follows:

1. The Commission's regulations that establish the initial Virginia fee schedules shall be effective on January 1, 2018.

2. Separate initial Virginia fee schedules shall be established for fee scheduled medical services (i) provided by each category of providers of fee scheduled medical services and (ii) within each of the medical communities to reflect the variations among the medical communities as provided in subdivision 3, for each category of providers of fee scheduled medical services.

3. The Virginia fee schedules for each medical community shall reflect variations among medical communities in (i) all reimbursements and other amounts paid to providers for fee scheduled medical services among the medical communities and (ii) the extent to which the number of providers within the various medical communities is adequate to meet the needs of injured workers.

4. In establishing the initial Virginia fee schedules for fee scheduled medical services, the Commission shall establish the maximum fee for each fee scheduled medical service at a level that approximates the reimbursement objective for each category of providers of fee scheduled medical services among the medical communities. The Commission shall retain a firm with nationwide experience and actuarial expertise in the development of workers' compensation fee schedules to assist the Commission in establishing the initial Virginia fee schedules. The Commission shall consult with the regulatory advisory panel established pursuant to subdivision F 2 prior to retaining such firm. Such firm shall be retained to assist the Commission in developing the Virginia fee schedules by recommending a methodology that will provide, at reasonable cost to the Commission, statistically valid estimates of the reimbursement objective for fee scheduled medical services within the medical communities, based on available data or, if the necessary data is not available, by recommending the optimal methodology for obtaining the necessary data. The Commission shall consult with the regulatory advisory panel prior to adopting any such methodology. Such methodology may, but is not required to, be based on applicable codes. The estimates of the reimbursement objective for fee scheduled medical services shall be derived from data on all reimbursements and other amounts paid to providers for fee scheduled medical services provided pursuant to this title during 2014 and 2015, to the extent available.

D. The Commission shall review Virginia fee schedules during the year that follows the transition date and biennially thereafter and, if necessary, adjust the Virginia fee schedules in order to address (i) inflation or deflation as reflected in the medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) for the South as published by the Bureau of Labor Statistics of the U.S. Department of Labor; (ii) access to fee scheduled medical services; (iii) errors in calculations made in preparing the Virginia fee schedules; and (iv) incentives for providers. The Commission shall not adjust a Virginia fee schedule in a manner that reduces fees on an existing schedule unless such a reduction is based on deflation or a finding by the Commission that advances in technology or errors in calculations made in preparing the Virginia fee schedules justify a reduction in fees.

E. The maximum pecuniary liability of the employer for a fee scheduled medical service that is not included in a Virginia fee schedule when it is provided shall be determined by the Commission. The Commission's determination of the employer's maximum pecuniary liability for such fee scheduled medical service shall be effective until the Commission sets a maximum fee for the fee scheduled medical service and incorporates such maximum fee into an adjusted Virginia fee schedule adopted pursuant to subsection D. If the fee scheduled medical service is not included in a Virginia fee schedule because it is:

1. A new type of technology, the employer's maximum pecuniary liability shall not exceed 130 percent of the provider's invoiced cost for such device, as evidenced by a copy of the invoice. If the new type of technology has not been cleared or approved by the FDA prior to such date, then the provider shall not be entitled to payment or reimbursement therefor unless the employer or its insurer agree; or

2. A new type of procedure that has not been assigned a billing code, the employer's maximum pecuniary liability shall not exceed 80 percent of the provider's charge for the service based on the provider's charge master or schedule of fees, provided the employer and the provider mutually agree to the provision of such procedure.

F. The Commission shall:

1. Provide public access to information regarding the Virginia fee schedules for medical services, by categories of providers of fee scheduled medical services and for each medical community, through the Commission's website. No information provided on the website shall be provider-specific or disclose or release the identity of any provider; and

2. Utilize a 10-member regulatory advisory panel to assist in the development of regulations adopting initial Virginia fee schedules pursuant to subsection C, in adjusting initial Virginia fee schedules pursuant to subsection D, and on all matters involving or related to the fee schedule as deemed necessary by the Commission. One member of the regulatory advisory panel shall be selected by the Commission from each of the following: (i) the American Insurance Association; (ii) the Property and Casualty Insurers Association of America; (iii) the Virginia Self-Insurers Association, Inc.; (iv) the Medical Society of Virginia; (v) the Virginia Hospital and Healthcare Association; (vi) a Type One teaching hospital; (vii) the Virginia Orthopaedic Society; (viii) the Virginia Trial Lawyers Association; (ix) a group self-insurance association representing employers; and (x) a local government group self-insurance pool formed under Chapter 27 (§ 15.2-2700 et seq.) of Title 15.2. The Commission shall meet with the regulatory advisory panel and consider the recommendations of its members in its development of the Virginia fee schedules pursuant to subsections C and D.

G. The Commission's retaining of a firm with nationwide experience and actuarial expertise in the development of workers' compensation fee schedules to assist the Commission in developing the Virginia fee schedules pursuant to subsections C and D shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), provided the Commission shall issue a request for proposals that requires submission by a bidder of evidence that it satisfies the conditions for eligibility established in this subsection and in subdivision C 4. Records and information relating to payments or reimbursements to providers that is obtained by or furnished to the Commission by such firm or any other person shall (i) be for the exclusive use of the Commission in the course of the Commission's development of fee schedules and related regulations and (ii) shall remain confidential and shall not be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

H. When the total charges of a hospital or Type One teaching hospital, based on such provider's charge master, for inpatient hospital services covered by a DRG code exceed the charge outlier

threshold, then the Commission shall establish the maximum fee for such scheduled inpatient hospital services at an amount equal to the total of (i) the maximum fee for the service as set forth in the applicable fee schedule and (ii) initially equal to 80 percent of the provider's total charges for the service in excess of the charge outlier threshold. The charge outlier threshold for such services initially shall equal 300 percent of the maximum fee for the service set forth in the applicable fee schedule; however, the Commission, in consultation with the firm retained pursuant to subdivision C 4, is authorized on a biennial basis to adjust such percentage if it finds that the number of such claims for which the total charges of the hospital or Type One teaching hospital exceed the charge outlier threshold is less than five percent or to increase such percentage if such number is greater than 10 percent of all such claims.

I. No provider shall use a different charge master or schedule of fees for any medical service provided under this title than the provider uses for health care services provided to patients who are not claimants under this title.

J. The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of § 65.2-603, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

K. The Commission shall determine the number and geographic area of communities across the Commonwealth. In establishing the communities, the Commission shall consider the ability to obtain relevant data based on geographic area and such other criteria as are consistent with the purposes of this title. The Commission shall use the communities established pursuant to this subsection in determining charges that prevail in the same community for treatment provided prior to the transition date.

L. The pecuniary liability of the employer for treatment of a medical service that is rendered on or after July 1, 2014, by:

1. An advanced practice registered nurse or physician assistant serving as an assistant-at-surgery shall be limited to no more than 20 percent of the reimbursement due to the physician performing the surgery; and

2. An assistant surgeon in the same specialty as the primary surgeon shall be limited to no more than 50 percent of the reimbursement due to the primary physician performing the surgery.

M. Multiple procedures completed on a single surgical site associated with a medical service rendered on or after July 1, 2014, shall be coded and billed with appropriate CPT codes and modifiers and paid according to the National Correct Coding Initiative rules and the CPT codes as in effect at the time the health care was provided to the claimant.

N. The CPT code and National Correct Coding Initiative rules, as in effect at the time a medical service was provided to the claimant, shall serve as the basis for processing a health care provider's billing form or itemization for such items as global and comprehensive billing and the unbundling of

medical services. Hospital in-patient medical services shall be coded and billed through the International Statistical Classification of Diseases and Related Health Problems as in effect at the time the medical service was provided to the claimant.

Code 1950, § 65-86; 1968, c. 660, § 65.1-89; 1991, c. 355; 2014, c. 670; 2015, c. 456; 2016, cc. 279, 290; 2017, c. 478; 2018, c. 261; 2023, c. 183.

§ 65.2-605.1. Prompt payment; limitation on claims.

A. Payment for health care services that the employer does not contest, deny, or consider incomplete shall be made to the health care provider within 60 days after receipt of each separate itemization of the health care services provided.

B. If the itemization or a portion thereof is contested, denied, or considered incomplete, the employer or the employer's workers' compensation insurance carrier shall notify the health care provider within 45 days after receipt of the itemization that the itemization is contested, denied, or considered incomplete. The notification shall include the following information:

1. The reasons for contesting or denying the itemization, or the reasons the itemization is considered incomplete;

2. If the itemization is considered incomplete, all additional information required to make a decision; and

3. The remedies available to the health care provider if the health care provider disagrees.

Payment or denial shall be made within 60 days after receipt from the health care provider of the information requested by the employer or employer's workers' compensation carrier for an incomplete claim under this subsection.

C. Payment due for any properly documented health care services that are neither contested within the 45-day period nor paid within the 60-day period, as required by this section, shall be increased by interest at the judgment rate of interest as provided in § 6.2-302 retroactive to the date payment was due under this section.

D. An employer's liability to a health care provider under this section shall not affect its liability to an employee.

E. No employer or workers' compensation carrier may seek recovery of a payment made to a health care provider for health care services rendered after July 1, 2014, to a claimant, unless such recovery is sought less than one year from the date payment was made to the health care provider, except in cases of fraud. The Commission shall have jurisdiction over any disputes over recoveries.

F. No health care provider shall submit a claim to the Commission contesting the sufficiency of payment for health care services rendered to a claimant after July 1, 2014, unless (i) such claim is filed within one year of the date the last payment is received by the health care provider pursuant to this section or (ii) if the employer denied or contested payment for any portion of the health care services,

then, as to that service or portion thereof, such claim is filed within one year of the date the medical award covering such date of service for a specific item or treatment in question becomes final.

G. No health care provider shall submit, nor shall the Commission adjudicate, any claim to the Commission seeking additional payment for medical services rendered to a claimant before July 1, 2014, if the health care provider has previously accepted payment for the same medical services pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq.

H. The Commission, by January 1, 2016, shall establish a schedule pursuant to which employers, employers' workers' compensation insurance carriers, and providers of workers' compensation medical services shall be required, by a date determined by the Commission that is no earlier than July 1, 2016, and no later than December 31, 2018, to adopt and implement infrastructure under which (i) providers of workers' compensation medical services (providers) shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers, as applicable (payers) and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The Commission shall establish standards and methods for such electronic submissions and transactions that are consistent with International Association of Industrial Accident Boards and Commission Medical Billing and Payment guidelines. The Commission shall determine the date by which payers and providers shall be required to adopt and implement the infrastructure, which determinations shall be based on the volume and complexity of workers' compensation cases in which the payer or provider is involved, the resources of the payer or provider, and such other criteria as the Commission determines to be appropriate.

2014, c. 670; 2015, c. 621; 2016, cc. 279, 290; 2018, c. 261; 2019, c. 760.

§ 65.2-605.2. Biennial peer-reviewed studies.

A. The Commission shall have a peer-reviewed study conducted every two years commencing in 2016 by a reputable independent, not-for-profit research organization to determine how Virginia's workers' compensation system and workers' compensation medical costs compare with (i) those of other states' systems and (ii) previous workers' compensation medical benchmarks studies conducted in Virginia. Such studies shall also review the status of access to medical services under Virginia's workers' compensation system.

B. The Commission shall pay for the studies conducted pursuant to subsection A through revenues generated pursuant to the administrative tax assessed pursuant to Chapter 10 (§ 65.2-1000 et seq.) and deposited in the fund established pursuant to § 65.2-1007.

2016, cc. 279, 290.

§ 65.2-606. Physicians for medical examination.

The Commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary

medical examination and to testify in respect thereto; however, the provisions of this section shall not apply to determination of whether an employee died of pneumoconiosis or any chronic occupational lung disease, which shall be governed by the provisions of § 65.2-513 and the regulations promulgated thereunder. Such physician or surgeon shall be allowed travelling expenses and a reasonable fee to be fixed by the Commission.

The fees and expenses of such physician or surgeon shall be paid by the Commonwealth.

Code 1950, § 65-87; 1966, c. 417; 1968, c. 660, § 65.1-90; 1972, c. 619; 1991, c. 355.

§ 65.2-607. Medical examination; physician-patient privilege inapplicable; autopsy.

A. After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Commission, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Commission. However, no employer may obtain more than one examination per medical specialty without prior authorization from the Commission, based upon a showing of good cause or necessity. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by, any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this title, or any action at law brought to recover damages against any employer subject to the provisions of this title.

B. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this title shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Commission the circumstances justify the refusal or obstruction.

C. The employer or the Commission may in any case of death require an autopsy at the expense of the party requesting the same. Such autopsy shall be performed upon order of the Commission, and anyone obstructing or interfering with such autopsy shall be punished for contempt.

Code 1950, § 65-88; 1968, c. 660, § 65.1-91; 1991, c. 355; 1993, c. 379.

Chapter 7 - PROCEDURE IN CONNECTION WITH AWARDS

§ 65.2-700. Jurisdiction of Commission.

All questions arising under this title, if not settled by agreements of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise herein provided.

Code 1950, § 65-89; 1968, c. 660, § 65.1-92; 1991, c. 355.

§ 65.2-701. Agreement as to compensation; penalty.

A. If after injury or death, the employer and the injured employee or his dependents reach an agreement in regard to compensation or in compromise of a claim for compensation under this title, a

memorandum of the agreement in the form prescribed by the Commission shall be filed with the Commission for approval. The agreement may be prepared by the employee, the employer or the compensation carrier. If approved, the agreement shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable as provided by § 65.2-710. If not approved, the same agreement shall be void. Such agreement may be approved only when the Commission, or any member thereof, is clearly of the opinion that the best interests of the employee or his dependents will be served thereby. The approval of such agreement shall bind infant or incapacitated dependents affected thereby. Any agreement entered into during the pendency of an appeal to the Court of Appeals shall be effective only with the approval of the Commission as herein provided.

B. An employer or insurance carrier which fails to file a memorandum of such agreement with the Commission within fourteen calendar days of the date of its complete written execution as indicated thereon may be subject to a fine not to exceed $1,000 and to any other appropriate sanctions of the Commission.

C. Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer, but rather to encourage them, so long as the amount of compensation and the time and manner of payment are approved by the Commission. A copy of such settlement agreement shall be filed with the Commission by the employer.

Code 1950, §§ 65-41, 65-90; 1954, c. 518; 1960, c. 299; 1968, c. 660, §§ 65.1-45, 65.1-93; 1971, Ex. Sess., c. 156; 1984, c. 703; 1989, c. 438; 1991, cc. 97, 355; 1997, c. 801.

§ 65.2-702. Disagreement on compensation; venue.

A. If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this title, or if they have reached such an agreement which has been signed and filed with the Commission and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon.

B. Immediately after such application has been received the Commission shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county where the injury occurred, or in a contiguous city or county, unless otherwise designated by the Commission.

Code 1950, § 65-91; 1968, c. 660, § 65.1-94; 1974, c. 315; 1991, c. 355; 1993, c. 693.

§ 65.2-703. Interrogatories and depositions.

A. Any party to a proceeding under this title may serve interrogatories or cause the depositions of witnesses residing within or without the Commonwealth to be taken, the costs to be taxed as other costs by the Commission. All interrogatories, depositions, or any other discovery shall conform to rules governing discovery promulgated by the Commission.

B. The Commission shall adopt rules governing discovery conforming as nearly as practicable to Part Four of the Rules of the Virginia Supreme Court. Such rules shall be adopted in accordance with and pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

Code 1950, § 65-91.1; 1968, c. 660, § 65.1-95; 1970, c. 470; 1991, c. 355; 1993, c. 694.

§ 65.2-704. Hearing; award or opinion by Commission.

A. The Commission or any of its members or deputies shall hear the parties at issue, their representatives, and witnesses; shall decide the issues in a summary manner; and shall make an award or opinion carrying out the decision.

B. Any member of the Commission who hears the parties at issue and makes an award under the provisions of subsection A shall not participate in a rehearing and review of such award provided under § 65.2-705.

C. Hearings convened by the Commission shall be public proceedings and, upon proper request to the Commission, may, in the discretion of the Commission, be video recorded for public broadcast at the expense of the requesting party, subject only to the same limitations and conditions as apply to court proceedings in the Commonwealth.

Code 1950, § 65-92; 1954, c. 370; 1962, c. 340; 1968, c. 660, § 65.1-96; 1980, c. 600; 1989, c. 318; 1991, c. 355; 1997, c. 225; 2003, cc. 664, 671; 2010, cc. 160, 564; 2012, c. 588.

§ 65.2-705. Review of award; rehearing.

A. If an application for review is made to the Commission within 30 days after issuance of an award, the full Commission, except as provided in subsection B of § 65.2-704 and if the first hearing was not held before the full Commission, shall review the evidence or, if deemed advisable, as soon as practicable, hear the parties at issue, their representatives, and witnesses. The Commission shall make an award which, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings.

B. A rehearing convened under this section shall be a public proceeding and, upon proper request, may, in the discretion of the Commission, be video recorded for public broadcast at the expense of the requesting party, subject only to the same limitations and conditions as apply to court proceedings in the Commonwealth.

C. Upon an application for review made pursuant to subsection A, the opposing party at issue shall have 14 days thereafter to make an independent application for review.

D. When a vacancy on the Commission exists, or when one or more members of the Commission are absent or are prohibited from sitting with the full Commission to hear a review, the Chairman may appoint one or more deputy commissioners or recall one or more retired members of the Commission to participate in the review. The retired member or members recalled shall be the member or members who occupied the seat for which such member or members are being recalled, unless the parties oth-

erwise consent. If retired members of the Commission are recalled as provided in this subsection, they shall be compensated as provided in § 17.1-327.

Code 1950, § 65-93; 1954, c. 450; 1956, c. 79; 1968, c. 660, § 65.1-97; 1980, cc. 600, 606; 1989, c. 318; 1991, c. 355; 1994, c. 289; 1998, c. 95; 2003, cc. 664, 671; 2010, cc. 160, 564; 2012, c. 588; 2014, c. 205.

§ 65.2-706. Conclusiveness of award; appeal.

A. The award of the Commission, as provided in § 65.2-704, if not reviewed in due time, or an award of the Commission upon such review, as provided in § 65.2-705, shall be conclusive and binding as to all questions of fact. No appeal shall be taken from the decision of one Commissioner until a review of the case has been had before the full Commission, as provided in § 65.2-705, and an award entered by it. Appeals shall lie from such award to the Court of Appeals in the manner provided in the Rules of the Supreme Court.

B. The notice of appeal shall be filed with the clerk of the Commission within 30 days from the date of such award. A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals as provided in the Rules of Court.

C. Cases so appealed shall be placed upon the privileged docket of the Court of Appeals and be heard at the next ensuing term thereof. In case of an appeal from the decision of the Commission to the Court of Appeals, or from the decision of the Court of Appeals to the Supreme Court, the appeal shall operate as a suspension of the award and no employer shall be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined in accordance with the provisions of this title.

Code 1950, § 65-94; 1968, c. 660, § 65.1-98; 1971, Ex. Sess., c. 156; 1972, c. 696; 1977, c. 624; 1984, cc. 659, 703; 1991, c. 355; 1999, c. 938; 2003, cc. 664, 671; 2010, cc. 160, 564.

§ 65.2-706.1. Estoppel effect of a Virginia Workers' Compensation Commission determination of employment status.

A final, unappealed award by the Virginia Workers' Compensation Commission that a person is or is not an employee of another for the purpose of obtaining jurisdiction shall estop either of said parties from asserting otherwise in any subsequent action between such parties upon the same claim or cause of action in a court of this Commonwealth.

1997, c. 333.

§ 65.2-706.2. Claims not barred.

No order issued by the Commission awarding or denying benefits shall bar by res judicata any claim by an employee or cause a waiver, abandonment, or dismissal of any claim by an employee if the order does not expressly adjudicate such claim.

2021, Sp. Sess. I, c. 515.

§ 65.2-707. Interest on appealed award.

An award entered by the Commission shall take effect on the date of entry. To the extent that any payment due under an award is delayed beyond its due date by reason of an appeal to the full Commission or an appellate court, payments so delayed shall bear interest at the judgment rate as provided in § 6.2-302.

1982, c. 410, § 65.1-98.1; 1991, c. 355.

§ 65.2-708. Review of award on change in condition.

A. Upon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Commission may review any award of compensation and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this title, and shall immediately send to the parties a copy of the award. No application filed by a party alleging a change in condition shall be docketed for hearing by the Commission unless any medical reports upon which the party is relying are submitted to the Commission. No such review shall affect such award as regards any moneys paid except pursuant to §§ 65.2-712, 65.2-1105, and 65.2-1205. No such review shall be made after 24 months from the last day for which compensation was paid, pursuant to an award under this title, except: (i) 36 months from the last day for which compensation was paid shall be allowed for the filing of claims payable under § 65.2-503 and certain claims under subsection B of § 65.2-406 or (ii) 24 months from the day that the claimant undergoes any surgical procedure compensable under § 65.2-603 to repair or replace a prosthesis or orthosis.

B. In those cases where no compensation has been paid, the Commission may make an award under § 65.2-503 within 36 months from the date of the accident.

C. All wages paid, for a period not exceeding 24 consecutive months, to an employee (i) who is physically unable to return to his pre-injury work due to a compensable injury and (ii) who is provided work within his capacity at a wage equal to or greater than his pre-injury wage shall be considered compensation paid pursuant to an award for compensation but shall not result in a reduction of the maximum number of weeks of compensation benefits as described in §§ 65.2-500 and 65.2-518.

Code 1950, § 65-95; 1964, c. 209; 1968, c. 660, § 65.1-99; 1972, c. 229; 1975, c. 365; 1977, cc. 345, 380; 1985, c. 453; 1988, c. 518; 1989, cc. 313, 324, 552, § 65.1-55.1; 1991, c. 355; 2013, c. 445.

§ 65.2-709. Cost of living supplements for total incapacity and dependents of deceased.

A. Cost of living supplements shall be payable under this section if:

1. The combined disability benefit entitlement of a claimant or his dependents under this title and the federal Old-Age, Survivors, and Disability Insurance program is less than 80 percent of the average monthly earnings of the claimant before disability or death; or

2. The claimant or his dependents are receiving disability payments under this title but not benefits under the federal Old-Age, Survivors, and Disability Insurance program.

Such cost of living supplements shall be payable, in addition to the other benefits payable under this title, in accordance with the provisions of this section to those recipients of awards resulting from occupational disease, accident, or death occurring on or after July 1, 1975, under § 65.2-500, subsection C of § 65.2-503, subdivision A 4 of § 65.2-504, and §§ 65.2-512 and 65.2-513. For purposes of determining the monthly amount of combined disability entitlement received by a claimant pursuant to subdivision A 1, the claimant may deduct any monthly amounts paid for Medicare.

B. The Commission may require the claimant to present evidence of filing for federal Old-Age, Survivors, and Disability Insurance benefits in order to establish eligibility under subdivision A 1 and also may require the claimant to furnish the employer with the decision on his claim for such federal benefits.

C. The amounts of supplementary payments provided for herein shall be determined by using a compounding method of computation annually. The percentage of change shall be determined by reference to the increase, if any, in the United States Average Consumer Price Index for all items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, from its monthly average, from one calendar year to another.

D. Amounts of supplementary payments shall be based on the percentage increase, if any, in the Average Consumer Price Index for all items adjusted annually. Any change in the cost of living supplement determined as of any determination date shall become effective as of October 1 next following such determination date and, as the case may be, shall be added to or subtracted from any cost of living supplements previously payable; however, compensation paid the claimant under this section shall at no time exceed the then current maximum weekly amount payable under § 65.2-500.

1975, c. 472, § 65.1-99.1; 1981, c. 265; 1986, c. 548; 1991, c. 355; 1997, c. 296; 2022, c. 182.

§ 65.2-710. Enforcement, etc., of orders and awards.

Orders or awards of the Commission may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order or award by the Commission. The Commission shall certify such order or award upon satisfactory evidence of noncompliance with the same.

1976, c. 149, § 65.1-100.1; 1991, c. 355.

§ 65.2-711. Reporting of address change by employee; suspension of payment of benefits.

So long as an employee is entitled to payment of compensation under this title, such employee shall have a duty to disclose to the Commission his current residential address and to report any changes of address as they may occur. The failure to disclose or report such address or changes of address without reasonable justification may result in the suspension of compensation payments until the employee complies with this duty. When the Commission is properly notified of the change in the employee's address, the Commission shall notify the employer when the employer is self-insured, or the employer's insurer in all other cases.

1983, c. 416, § 65.1-100.2; 1991, c. 355; 1996, c. 178.

§ 65.2-712. Reporting incarcerations, change in earnings, remarriage, change in student status; recovery of payments procured by fraud, misrepresentation, or unreported change in condition.
So long as an employee or statutory dependent pursuant to § 65.2-515 receives payment of compensation under this title, any such person shall have a duty immediately to disclose to the employer, when the employer is self-insured, or insurer in all other cases, any incarceration, return to employment, increase in his earnings, remarriage or change in his status as a full-time student. Any payment to a claimant by an employer or insurer which is later determined by the Commission to have been procured by the employee or statutory dependent under § 65.2-515 by fraud, misrepresentation, or failure to report any incarceration, return to employment, increase in earnings, remarriage or change in his status as a full-time student may be recovered from the claimant or statutory dependent by the employer or insurer either by way of credit against future compensation payments due the claimant or statutory dependent, or by action at law against the claimant or statutory dependent. The Commission shall provide for notification to the statutory dependent of his obligation under this section.

1985, c. 453, § 65.1-100.3; 1991, c. 355; 1992, c. 466; 1996, c. 570.

§ 65.2-713. Costs.
A. If the Commission or any court before whom any proceedings are brought or defended by the employer or insurer under this title shall determine that such proceedings have been brought, prosecuted, or defended without reasonable grounds, it may assess against the employer or insurer who has so brought, prosecuted, or defended them the whole cost of the proceedings, including a reasonable attorney's fee, to be fixed by the Commission.

B. Where the Commission finds that an employer or insurer has delayed payment without reasonable grounds, it may assess against the employer or insurer the whole cost of the proceedings, including a reasonable attorney's fee to be fixed by the Commission. In such a case where an attorney's fee is awarded against the employer or insurer, the Commission shall calculate and add to any award made to the claimant interest at the judgment rate, as set forth in § 6.2-302, on the benefits accrued from the date the Commission determined the award should have been paid through the date of the award.

C. Where the Commission finds that an employer or insurer has filed an application for a hearing in bad faith, it shall assess against the employer or an insurer an amount up to ten percent of the total amount of the benefits accrued from the date the Commission determined the award should have been paid through the date of the award. This payment shall be in addition to any costs, fees, or awards as set forth in subsection B.

Code 1950, § 65-97; 1958, c. 509; 1968, c. 660, § 65.1-101; 1989, c. 496; 1991, c. 355; 1997, c. 158.

§ 65.2-714. Fees of attorneys and physicians and hospital charges.
A. Fees of attorneys and physicians and charges of hospitals for services, whether employed by employer, employee, or insurance carrier under this title, shall be subject to the approval and award of the Commission. The Commission shall have exclusive jurisdiction over all disputes concerning such fees or charges and may order the repayment of the amount of any fee which has already been paid

that it determines to be excessive; appeals from any Commission determinations thereon shall be taken as provided in § 65.2-706. The Commission shall also retain jurisdiction for employees to pursue payment of charges for medical services notwithstanding that bills or parts of bills for health care services may have been paid by a source other than an employer, workers' compensation carrier, guaranty fund, or uninsured employer's fund. No physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Commission in connection with the case.

B. If a contested claim is held to be compensable under this title and, after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third-party insurance carrier or health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate. However, the Commission shall not award attorney fees under this subsection unless and until the employee's attorney has complied with Rule 6.2 of the Rules of the Commission. The fee shall be paid from the sum that benefits the third-party insurance carrier or health care provider. In determining whether the employee's attorney's work with regard to the contested claim resulted in an award of benefits that inure to the benefit of a third-party insurance carrier or health care provider, and in determining the reasonableness of the amount of any fee awarded to an attorney under this subsection, the Commission shall consider only the amount paid by the employer or insurance carrier to the third-party insurance carrier or health care provider for medical, surgical, and hospital service rendered to the employee through (i) the date on which the contested claim is heard before the Deputy Commissioner, is settled, or is resolved by order of the Commission or (ii) the date the employer or insurance carrier provides written notice of its abandonment of its defense to the contested claim and shall not consider additional amounts previously paid to a health care provider or reimbursed to a third-party insurance carrier. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical, and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier.

C. Payment of any obligation pursuant to this section to any third-party insurance carrier or health care provider shall discharge the obligation in full. The Commission shall not reduce the amount of medical bills owed to the Commonwealth or its agencies without the written consent of the Office of the Attorney General.

D. No physician, hospital, or other health care provider as defined in § 8.01-581.1 shall balance bill an employee in connection with any medical treatment, services, appliances, or supplies furnished to the employee in connection with an injury for which (i) a claim has been filed with the Commission pursuant to § 65.2-601, (ii) payment has been made to the health care provider pursuant to § 65.2-605.1, or (iii) an award of compensation is made pursuant to § 65.2-704. For the purpose of this subsection, a health care provider "balance bills" whenever (a) an employer or the employer's insurance carrier declines to pay all of the health care provider's charge or fee and (b) the health care provider seeks

payment of the balance from the employee. Nothing in this section shall prohibit a health care provider from using the practices permitted in § 65.2-601.1.

Code 1950, § 65-98; 1968, c. 660, § 65.1-102; 1982, c. 439; 1985, c. 445; 1987, c. 559; 1988, c. 544; 1991, c. 355; 1994, c. 707; 1995, cc. 214, 266; 2012, c. 543; 2014, c. 670; 2016, cc. 279, 290.

§ 65.2-715. Providing written information.

Whenever, in the course of proceedings in connection with awards, the Workers' Compensation Commission issues any written notice, opinion, order or award regarding a specific case, the Commission shall provide copies to the employee, the employer and the compensation carrier, and, if represented, their counsel, at the same time. The requirements of this section may be satisfied via electronic communications in the manner prescribed by the Commission.

1998, c. 143; 2010, cc. 159, 274.

Chapter 8 - INSURANCE AND SELF-INSURANCE

§ 65.2-800. Duty to insure payment of compensation; effect of insurance.

A. Every employer subject to the compensation provisions of this title shall insure the payment of compensation to his employees in the manner hereinafter provided. While such insurance remains in force he or those conducting his business shall only be liable to an employee for personal injury or death by accident to the extent and in the manner herein specified.

B. To ensure that all employers who are required to have workers' compensation insurance under this title have notice of such requirement, the appropriate official of a county, city, or town who licenses employers to conduct business under Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 or the State Corporation Commission who charters employers to conduct business under § 12.1-12 shall provide employers requesting such licenses or charters on and after January 1, 1989, with information concerning statutory requirements for such insurance coverage. The Workers' Compensation Commission shall prepare such information and distribute it to such licensing or chartering officials. The failure of the local official or the State Corporation Commission to give such notice to an employer shall not relieve the employer of the duty of acquiring insurance as required by this title.

C. As used in this section, the words "those conducting his business" shall include any person whose act results in an injury or death compensable under this title and arises out of and in the course of employment by an employer who is or may be liable for the payment of compensation. A person other than an employer or statutory employer, or a person employed by either, whose acts result in such injury or death shall be deemed an "other party" within the meaning of § 65.2-309.

Code 1950, § 65-99; 1968, c. 660, § 65.1-103; 1977, c. 113; 1988, c. 543; 1991, c. 355.

§ 65.2-801. Insurance or proof of financial ability to pay required.

A. Every employer subject to this title shall secure his liability thereunder by one of the following methods:

1. Insuring and keeping insured his liability in an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth;

2. Receiving a certificate pursuant to § 65.2-808 from the Workers' Compensation Commission authorizing such employer to be an individual self-insurer;

3. Being a member in good standing of a group self-insurance association licensed by the State Corporation Commission;

4. Being a member in good standing of a local government group self-insurance pool licensed by the State Corporation Commission pursuant to § 15.2-2706 to offer workers' compensation coverage; or

5. Entering into an agreement with a professional employer organization for professional employer services which includes voluntary market workers' compensation insurance for coemployees of the professional employer organization and the client company procured from an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth. A professional employer organization may obtain voluntary market workers' compensation insurance in its own name for all coemployees which it shares or which are assigned or allocated to it pursuant to the agreement between the professional employer organization and the client company. The client company shall maintain separate voluntary market workers' compensation insurance insuring any and all employees of the client company not insured through the policy obtained by the professional employer organization.

B. An employer who satisfies the requirements of this section shall be certified by the Workers' Compensation Commission as an individual self-insurer and permitted to pay direct the compensation in the amount and manner and when due as provided for in this title. The Commission shall not certify an employer as a self-insurer unless it receives in such form as it requires satisfactory proof of the solvency of such employer, the financial ability of the employer to meet his obligations and the ability of the employer to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title. The Commission shall establish reasonable requirements and standards for approval of an employer as a self-insurer including, without limitation, the quality and amount of security deposits, bonds or indemnity, the amount of advance payments and reserves required, the investment of such funds, and the form and content of financial information to be submitted by the employer and the frequency of such submissions. For the purposes of any debt/equity ratio (total liabilities to net worth) minimum standard, a ratio of less than 2.2:1 shall be deemed satisfactory. The Commission shall, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations. The Bureau of Insurance of the State Corporation Commission shall, at the request of the Commission, assist the Commission in establishing the reasonable requirements and standards for approval and certification of an employer as a self-insurer. The Workers' Compensation Commission may in its discretion require the deposit of a financial instrument of a specified amount from an entity approved by the Workers' Compensation Commission to secure the payment of compensation liabilities as they are

incurred. The form of the instrument to be deposited shall be selected by the employer from the following list of acceptable financial instruments and may include any combination thereof so long as the amount specified by the Workers' Compensation Commission is deposited and the actual value thereof maintained: corporate surety bonds, certificates of deposit, United States government obligations, letters of credit, and cash.

C. The State Treasurer shall be the custodian of securities deposited by the employer under the requirements of this section, or under § 65.2-802, and for such services he shall receive a compensation of one-tenth of one percent per year of the amount of securities deposited with him, payable by or on behalf of such employers.

Code 1950, § 65-100; 1968, c. 660, § 65.1-104.1; 1973, c. 173; 1979, c. 463; 1991, c. 355; 1992, c. 816; 1996, c. 181; 2000, cc. 624, 718; 2004, cc. 44, 173; 2006, c. 265; 2009, cc. 285, 336.

§ 65.2-802. Requirements for licensure as group self-insurance association; annual assessment.

A. Two or more employers having a common interest may be licensed by the State Corporation Commission as a group self-insurance association and permitted to enter into agreements to pool their liabilities under this title. The members of any such group self-insurance association may also enter into agreements to pool their liabilities for workers' compensation benefits which may arise under the laws of any other jurisdiction and other types of employers' liabilities for the death or disablement of, or injury to, their employees. Benefits payable by any such association for such members' liabilities under the laws of any other jurisdiction shall extend only to employees otherwise eligible for coverage under the provisions of this title.

B. The State Corporation Commission shall not license a group self-insurance association or grant authorization for an employer to become a member of such group unless it receives in such form as it requires satisfactory proof of the solvency of any such employer, the financial ability of each to meet his obligations as a member, and the ability of the group to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title and as may be agreed upon with respect to other types of employers' liabilities which may be authorized and provided hereunder.

C. Members of a group shall execute a written agreement under which each agrees to jointly and severally assume and discharge any liability under this title of employers party to such agreement. Agreements among the members shall be subject to approval by the State Corporation Commission; however, no such agreement nor membership in a group self-insurance association shall relieve an employer of the liabilities imposed by this title with respect to his employees. In addition to the rights of the association under such agreements, in the event of failure of the association to enforce such rights after reasonable notice to the association, the State Corporation Commission shall have the right independently to enforce on behalf of the association the joint and several liability of its members under this title and the liability of members for any unpaid contributions and assessments. The State Corporation Commission shall be entitled to recover its expenses and attorneys' fees.

D. Any person, firm, or corporation desiring to engage in the business of providing services for a group self-insurance association shall satisfy the State Corporation Commission of its ability to perform the services necessary to fulfill the employer's obligations under this title before it undertakes to provide such services to any group self-insurance association. The State Corporation Commission may from time to time review and alter any decision approving an employer as a member of a group or its approval of a group or of an agency servicing a group. The State Corporation Commission may in its discretion require the deposit of an acceptable security, indemnity, or bond or the purchase of such excess insurance or the ceding of reinsurance on a specific or aggregate excess of loss basis as may be required by the circumstances.

E. The State Corporation Commission may establish reasonable requirements and standards for the approval of a group self-insurance association and the administration of such associations including, without limitation, the quality, amount and accounting of security deposits, bonds, excess insurance and reinsurance, the membership in any group self-insurance association, the amount of advance payments and reserves required of group self-insurance associations, the investment of such funds, the form and content of financial information to be submitted by a group self-insurance association and the frequency of such submissions, and the terms of agreements between members of a group self-insurance association. The State Corporation Commission may, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations; however, any group self-insurance association entering into a reinsurance transaction pursuant to the provisions of this section shall be deemed an insurer for purposes of such transaction and shall be subject to Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2.

F. Notwithstanding any provision of this title to the contrary, each licensed group self-insurance association shall be assessed annually by the State Corporation Commission in like manner and amount to that provided by Chapter 4 (§ 38.2-400 et seq.) of Title 38.2 and shall pay such assessment in accordance with the aforesaid provisions of law; however, for the purposes of such assessment "direct gross premium income" of a licensed group self-insurance association shall be the aggregate of the amounts determined to be subject to the tax imposed by § 65.2-1006 on each employer member of such association.

G. Notwithstanding the provisions of § 49-25, neither the State Corporation Commission nor any other entity or person, as obligee under any surety bond required under this section or any regulation adopted hereunder, shall be required to institute suit against an association as a condition precedent to the surety's performance under the bond.

H. Subject to approval of the State Corporation Commission, and with such conditions as the State Corporation Commission may require, two or more group self-insurance associations formed pursuant to this section may merge if the resulting group self-insurance association assumes in full all obligations of the merged group self-insurance associations originally licensed pursuant to this section.

1979, c. 463, § 65.1-104.2; 1988, c. 365; 1990, c. 306; 1991, c. 355; 1994, cc. 333, 408; 2023, c. 426.

§ 65.2-803. Administrator and service company affiliation prohibited; exception.

A. No person, firm or corporation, which is engaged as an administrator for a group self-insurance association, shall be an employee, officer or director of, or have a direct or indirect financial interest in any person, firm or corporation which is engaged in the business of providing services for a group self-insurance association as a service company.

B. No person, firm or corporation, which is engaged in the business of providing services for a group self-insurance association as a service company, shall be an employee, officer or director of, or have a direct or indirect financial interest in, any person, firm or corporation which is engaged as an administrator for a group self-insurance association.

C. For purposes of this section, the term "firm" or "corporation" shall include any officer, director, or employee of any such firm or corporation.

D. This section shall not be construed to affect any contract, or extensions or renewals thereof, for services as an administrator or service company entered into by a group self-insurance association and effective prior to January 1, 1989.

1989, c. 662, § 65.1-104.3; 1991, c. 355.

§ 65.2-803.1. Requirements for registration as professional employer organization; annual assessment.

A. Any business entity desiring to engage in the business of providing professional employer services shall register with the Commission before any such services may be provided. The Commission may require any business entity having a controlling ownership interest in or sharing common ownership with a professional employer organization providing professional employer services in the Commonwealth to guarantee, in a form prescribed by the Commission, performance of all obligations pursuant to this title, including the payment of workers' compensation benefits.

B. Each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission within 30 calendar days of all new or terminated, in whole or in part, client companies. Upon registration and annually thereafter, each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission of all client companies. Such notice shall be confidential and shall not be disclosed to the public, provided that the Commission may respond to inquiries as to whether a client company has workers' compensation coverage; however, nothing herein shall be interpreted to prohibit or limit the production of documents containing such information from the professional employer organization pursuant to an otherwise lawful subpoena issued by a court of competent jurisdiction. Each such notification shall indicate, by client company, if the professional employer organization will provide voluntary market workers' compensation insurance and whether the client company will obtain separate workers' compensation insurance. The Commission may require such other information as it deems necessary for the administration of this section.

C. All agreements for professional employer services shall be in writing and shall provide a description of the respective rights and obligations of the professional employer organization and the client company. The professional employer organization shall provide a written summary of such rights and obligations to each coemployee, including information concerning filing for workers' compensation and unemployment benefits. No agreement for professional employer services shall alter or affect the terms and conditions of any collective bargaining agreement between the client company and its employees without the consent of the parties to such collective bargaining agreement.

D. A professional employer organization that is registered with the Commission and operating in compliance with the requirements of this section shall be deemed to be an employer of its coemployees and may assume responsibilities as an employer of its coemployees for the term of its agreement with a client company. A professional employer organization may secure and provide all required voluntary market workers' compensation insurance for its coemployees under a master workers' compensation insurance policy in the name of the professional employer organization.

E. A professional employer organization shall notify in writing the client company and coemployees of its intent to terminate any agreement for professional employer services with a client company at the time of or prior to termination. Such notice shall advise the client company of its obligation to secure workers' compensation coverage. The professional employer organization shall provide a copy of such notice to the Commission and the insurer at the time notice is given to the client company. Workers' compensation insurance coverage shall continue until termination or for fifteen calendar days after receipt of notice of termination by both the Commission and the client company, whichever is later. This section shall not alter the notice obligations of an insurer seeking to cancel workers' compensation coverage pursuant to subsection B of § 65.2-804. If a professional employer organization has received notice that its workers' compensation insurance policy will be cancelled or nonrenewed, the professional employer organization shall notify the client companies within seven calendar days after receipt of the notice. Failure of the professional employer organization to provide such notice to the client companies subrogates the Commission, upon payment of a claim from the Uninsured Employer's Fund to any coemployee of a client company that did not receive notice, to any right to recover damages which the injured coemployee or his personal representative may have against the professional employer organization.

F. This section shall not exempt a client company from any other license requirements imposed under federal, state, or local law, and a coemployee shall be recognized as an employee of the client company for all purposes. For purposes of licensing requirements, a professional employer organization shall not be deemed to be engaged in the occupation, trade or profession of the client company solely through the provision of professional employer services to that client company.

G. Where a professional employer organization or a staffing service has obtained workers' compensation insurance to secure its obligations under this title with respect to compensation on account of injury or death by accident, the rights and remedies available to the employee or coemployee under

this title shall be exclusive as to both the client company and the professional employer organization or staffing service in accordance with this title.

H. A professional employer organization that fails to comply with the provisions of this title or with the regulations of the Commission shall be subject to the requirements of Chapter 9 (§ 65.2-900 et seq.) of this title. The Commission is authorized to revoke or suspend any registration hereunder if the professional employer organization fails to comply with the provisions of this title or with the regulations of the Commission. If a registration is revoked as herein provided, the Commission may allow the professional employer organization to reregister upon application therefor if, when and after the conditions upon which revocation was based have been corrected and the professional employer organization has complied with all provisions of this title and applicable regulations. Whenever a registration is revoked or suspended the Commission may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the professional employer organization is located for an injunction to cause such professional employer organization to cease providing professional employer services. Suspension of a registration shall in all cases be for an indefinite time and the suspension may be lifted and rights under the registration fully or partially restored at such time as the Commission determines that the rights of the registrant appear to so require and the interests of the public will not be jeopardized by resumption of operation.

I. Notwithstanding any provision of this title to the contrary, each registered professional employer organization shall be assessed annually by the Commission, in addition to any other assessments provided in this title, an assessment in an amount not to exceed the sums necessary for the registration and supervision of all professional employer organizations. The assessment shall be apportioned and assessed and paid in proportion to the aggregate of the annual payroll of all coemployees shared by or assigned or allocated to the professional employer organization.

J. The Bureau of Insurance of the State Corporation Commission may request and shall receive information filed with the Commission by a professional employer organization. Such information shall be confidential and shall be used solely for informational purposes by the Bureau of Insurance and its staff.

K. No person shall sell, solicit, or negotiate, as those terms are defined in § 38.2-1800, contracts of insurance for or on behalf of a professional employer organization unless such person is licensed for that class of insurance as an insurance agent, as defined in § 38.2-1800.

L. The Commission may promulgate regulations as it deems necessary for the administration of this section.

2000, cc. 624, 718; 2001, c. 706; 2002, c. 469; 2005, c. 158.

§ 65.2-804. Evidence of compliance with title; notices of cancellation of insurance.

A. 1. Each employer subject to this title shall file with the Workers' Compensation Commission, in form prescribed by it, annually or as often as may be necessary, evidence of his compliance with the provisions of § 65.2-801 and all others relating thereto; however, if the employer secures his liability

under this title pursuant to subdivision A 1 of § 65.2-801 then the insurance carrier shall make a filing on behalf of the employer, and such filing shall be made electronically in the form as prescribed and to the agent as designated by the Commission, within 30 days of the inception of the policy. Evidence of an employer's compliance with the provisions of subdivision A 1 of § 65.2-801 shall be deemed to satisfy such provisions if it includes the name and address of the insured, the insured's federal employer identification number, his policy number, dates of insurance coverage, the name and address of his insurer, and the insurer's identification number. Every employer who has complied with the foregoing provision and has subsequently cancelled his insurance or his membership in a licensed group self-insurance association shall immediately notify the Workers' Compensation Commission of such cancellation, the date thereof and the reasons therefor. Every insurance carrier or group self-insurance association shall in like manner notify the Workers' Compensation Commission immediately upon the cancellation of any policy issued by it or any membership agreement, whichever is applicable, under the provisions of this title, except that a carrier or group self-insurance association need not set forth its reasons for cancellation unless requested by the Workers' Compensation Commission.

2. Every employer who cancels his insurance or his membership in a licensed group self-insurance association shall, prior to cancelling his insurance or his membership, give 30 days' written notice to his employees covered. Every employer who receives the notice required under subsection B of this section shall immediately forward a copy to his employees covered. Where the employer is a mine owner or operator, the notice or copy of notice required to be given by this subsection shall also be given to the Chief Mine Inspector. The provisions of this subsection shall not apply with respect to a cancellation incident to a change of insurance or membership where no lapse of coverage occurs.

B. No policy of insurance hereafter issued under the provisions of this title, nor any membership agreement in a group self-insurance association, shall be cancelled or nonrenewed by the insurer issuing such policy or by the group self-insurance association cancelling or nonrenewing such membership, except on 30 days' notice to the employer and the Workers' Compensation Commission, unless the employer has obtained other insurance and the Workers' Compensation Commission is notified of that fact by the insurer assuming the risk, or unless, in the event of cancellation, said cancellation is for nonpayment of premiums; then 10 days' notice shall be given the employer and the Workers' Compensation Commission.

C. The Commission may designate an agent for receipt of any notices required to be given to it pursuant to this section.

Code 1950, § 65-101; 1956, c. 467; 1968, c. 660, § 65.1-105; 1970, c. 470; 1979, c. 463; 1982, c. 383; 1991, c. 355; 1993, c. 725; 2002, c. 812; 2009, c. 150; 2010, cc. 282, 376; 2018, c. 260.

§ 65.2-805. Civil penalty for violation of §§ 65.2-800, 65.2-803.1, and 65.2-804.

A. If such employer fails to comply with the provisions of § 65.2-800 or 65.2-804, he shall be assessed a civil penalty of not more than $250 per day for each day of noncompliance, subject to a maximum penalty of $50,000. Such employer also shall be liable during continuance of such failure to any

employee either for compensation under this title or at law in a suit instituted by the employee against such employer to recover damages for personal injury or death by accident, and in any such suit such employer shall not be permitted to defend upon any of the following grounds:

1. That the employee was negligent;

2. That the injury was caused by the negligence of a fellow employee; or

3. That the employee had assumed the risk of the injury.

B. Any person who fails to comply with the provisions of § 65.2-803.1 shall be assessed a civil penalty of not less than $500 nor more than $5,000 for each instance of noncompliance, in addition to any other penalties applicable under this title.

C. The civil penalties herein provided may be assessed by the Commission in an open hearing with the right of review and appeal as in other cases. Upon a finding by the Commission of such failure to comply, and after 15 days' written notice thereof sent by certified mail to the employer, if such failure continues, the Commission may order the employer to cease and desist all business transactions and operations until found by the Commission to be in compliance with the provisions of this chapter.

D. Any civil penalty assessed pursuant to this section shall be divided equally between and paid into the administrative fund established in Chapter 10 (§ 65.2-1000 et seq.) and the Uninsured Employer's Fund established in Chapter 12 (§ 65.2-1200 et seq.). The Commission may add the costs of collection of such civil penalty to the aggregate civil penalty owed, in which event such costs shall be paid into the administrative fund established in Chapter 10 (§ 65.2-1000 et seq.).

Code 1950, § 65-102; 1968, c. 660, § 65.1-106; 1970, c. 470; 1974, c. 314; 1980, c. 443; 1991, c. 355; 1993, c. 378; 2005, c. 69; 2014, c. 204.

§ 65.2-806. Criminal penalties.

In addition to the civil penalties assessed pursuant to § 65.2-805, any employer who knowingly and intentionally fails to comply with the provisions of § 65.2-800 or 65.2-804 is guilty of a Class 2 misdemeanor.

Venue for the prosecution hereof when there is an injury shall lie in the county or city wherein the injury occurred.

1977, c. 434, § 65.1-106.1; 1991, c. 355; 2005, c. 69.

§ 65.2-807. Cost of insurance may not be deducted from wages.

It shall not be lawful for any employer to deduct from the wages of any of his employees any part of the cost of insurance as provided for in § 65.2-801 to insure liability, or to require or permit any of his employees to contribute in any manner toward such cost of insurance. For any violation of the provisions of this section, an employer shall be subject to a fine not exceeding $100 for each offense and shall refund to the individual employee the amount or amounts deducted or contributed. The fine herein provided may be assessed and the refund ordered by the Workers' Compensation Commission in an open hearing with the right of review and appeal as in other cases.

Code 1950, § 65-103; 1968, c. 660, § 65.1-107; 1991, c. 355.

§ 65.2-808. Self-insurance certificate.

Whenever an employer has complied with the provisions of § 65.2-801 relating to self-insurance, the Workers' Compensation Commission shall issue to such employer a certificate which shall remain in force for a period fixed by the Commission. But the Commission may upon at least thirty days' notice and hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation, the Commission may grant a new certificate to the employer upon his petition.

Code 1950, § 65-104; 1968, c. 660, § 65.1-108; 1979, c. 463; 1987, c. 343; 1991, c. 355.

§ 65.2-809. Constructive notice to, jurisdiction of, and awards, etc., binding upon insurer.

All policies insuring the payment of compensation under this title must contain clauses to the effect (i) that as between the employer and the insurer notice to or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge on the part of the insurer, (ii) that jurisdiction of the insured for the purposes of this title shall be jurisdiction of the insurer, and (iii) that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer.

Code 1950, § 65-105; 1968, c. 660, § 65.1-109; 1991, c. 355.

§ 65.2-810. How formal notice may be given.

Whenever by this title or the terms of any policy contract notice is required to be given by an employer to any insurance carrier, the same may be given by delivery or by mailing by registered letter properly addressed and stamped to the principal office or chief agent of such insurance carrier within this Commonwealth or to its home office, or to the secretary, general agent or chief officer thereof in the United States.

Code 1950, § 65-106; 1968, c. 660, § 65.1-110; 1991, c. 355.

§ 65.2-811. Liability of insurer.

No policy of insurance against liability arising under this title shall be issued unless it contains the agreement of the insurer that it will promptly pay the person entitled to the same all benefits conferred by this title and all installments of the compensation that may be awarded or agreed upon and that the obligation shall not be affected by any default of the insured after the injury or by any default in giving notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation, enforceable in his name.

Code 1950, § 65-107; 1968, c. 660, § 65.1-111; 1991, c. 355.

§ 65.2-812. Subrogation of insurance carrier to employer's rights; compromise.

When any employer is insured against liability for compensation with an insurance carrier, and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the

employer and may enforce any such rights in its own name or in the name of the injured employee or his personal representative; however, nothing herein shall be construed as conferring upon the insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding. No compromise settlement shall be made by the insurance carrier in the exercise of such right of subrogation without the approval of the Workers' Compensation Commission and the injured employee or the personal representative or dependents of the deceased employee being first obtained.

Code 1950, § 65-108; 1968, c. 660, § 65.1-112; 1991, c. 355.

§ 65.2-813. Insurance deemed subject to title; approval of forms.

Every policy for the insurance of the compensation herein provided or against liability therefor shall be deemed to be made subject to the provisions of this title. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Workers' Compensation Commission.

Code 1950, § 65-109; 1968, c. 660, § 65.1-113; 1991, c. 355.

§ 65.2-813.1. Insurers offering policies with deductibles.

Every insurer against liability arising under this title offering and making available policies in which the insured pays a deductible, without regard to amount and including such policies with deductibles of $1,000 or less, shall provide in such policies that (i) the insurer shall pay all of the deductible amount applicable to a compensable claim under this title to the person or provider entitled thereto, (ii) the insurer shall then obtain reimbursement from the policyholder for the applicable deductible amount, and (iii) failure to reimburse deductible amounts by the policyholder to the insurer will result in the cancellation of the deductible endorsement.

1995, c. 237.

§ 65.2-813.2. Premium discounts; drug-free workplace programs.

Every insurer providing coverage pursuant to this title shall provide a premium discount of up to five percent to every employer instituting and maintaining a drug-free workplace program satisfying such criteria as each insurer may establish.

1997, c. 410; 2001, c. 280.

§ 65.2-814. Insurer to furnish written evidence of coverage on request.

Upon request of its insured, every insurer against liability arising under this title shall furnish to such insured, within five working days of receipt of said request, a certificate or other writing evidencing the effective coverage afforded such insured. Any insurer violating the provisions of this section shall be punished by a fine of $500.

1973, c. 254, § 65.1-113.1; 1991, c. 355.

§ 65.2-815. Group self-insurance association required to furnish written evidence of membership.

Upon request of any member employer, a group self-insurance association shall furnish to such employer a certificate of membership or other written evidence of membership.

1979, c. 463, § 65.1-113.2; 1991, c. 355.

§ 65.2-816. Title not applicable to boiler, etc., insurance.

This title shall not apply to policies of insurance against loss from explosion of boilers or fly wheels or other similar single catastrophe hazards.

Code 1950, § 65-110; 1968, c. 660, § 65.1-114; 1991, c. 355.

§ 65.2-817. Rates; cooperation between State Corporation Commission and Workers' Compensation Commission.

Authority is hereby conferred upon the State Corporation Commission to make such arrangements with the Workers' Compensation Commission as may be agreeable to the Workers' Compensation Commission, for collecting, compiling, preserving and publishing statistical and other data in connection with the work of regulating workers' compensation insurance rates and for the division of the expenses thereof, to the end that duplication of work and expenditures may be avoided. Whenever it deems proper, with the consent of the Workers' Compensation Commission, the State Corporation Commission may appoint members of the Workers' Compensation Commission, or its employees, as special agents of the State Corporation Commission to take testimony and make reports with reference to any matter involving questions of workers' compensation insurance rates.

Code 1950, § 65-113; 1968, c. 660, § 65.1-117; 1991, c. 355.

§ 65.2-818. Minimum standards of service for insurers.

The State Corporation Commission in cooperation with the Workers' Compensation Commission shall establish minimum standards of service for insurers writing workers' compensation policies in this Commonwealth, including but not limited to the servicing of such policies, the establishment of offices within the Commonwealth, and the payment of compensation.

1970, c. 470, § 65.1-117.1; 1991, c. 355.

§ 65.2-819. Penalty for violation of certain provisions.

Any person or persons who shall in this Commonwealth (i) act or assume to act as agent for any such insurance carrier whose authority to do business in this Commonwealth has been suspended, while such suspension remains in force, (ii) fail to comply with requirements or standards imposed under §§ 65.2-817 and 65.2-818 or of Chapter 10 (§ 65.2-1000 et seq.) of this title, or (iii) willfully make a false or fraudulent statement of the business or condition of any such insurance carrier, or a false or fraudulent return as therein provided, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the court or jury trying the case.

Code 1950, § 65-114; 1968, c. 660, § 65.1-117.1; 1970, c. 470; 1991, c. 355.

§ 65.2-820. Application to State Corporation Commission for assignment of risk; insurer assigned risk to issue policy.

Every employer subject to the provisions of this chapter who has been unable to obtain a workers' compensation insurance policy shall have the right to apply to the State Corporation Commission to have his risk assigned to an insurance carrier licensed to write and writing workers' compensation insurance in this Commonwealth. The insurance carrier, whether stock, mutual, reciprocal or inter-insurer or other type or form of organization, to whom any such risk is assigned shall issue a policy of workers' compensation insurance which will enable such employer to meet the requirements of this chapter.

Code 1950, § 65-114.1; 1956, c. 358; 1968, c. 660, § 65.1-119; 1991, c. 355.

§ 65.2-821. State Corporation Commission to make rules and regulations, and establish rating schedules and rates.

A. The State Corporation Commission may make reasonable rules and regulations for the assignment of risks to insurance carriers. It shall establish such rate classifications, rating schedules, rates, rules and regulations to be used by insurance carriers issuing assigned risk workers' compensation policies in accordance with this chapter as appear to it to be proper.

B. In the establishment of rate classifications, rating schedules, rates, rules and regulations, it shall be guided by such principles and practices as have been established under its statutory authority to regulate workers' compensation insurance rates and it may act in conformity with its statutory discretionary authority in such matters.

Code 1950, § 65-114.2; 1956, c. 358; 1968, c. 660, § 65.1-120; 1991, c. 355.

§ 65.2-821.1. Payment and reimbursement practices; prohibitions.

A. As used in this section, unless the context requires a different meaning:

"Contracting entity" means (i) a person that enters into a provider contract with a provider or (ii) an intended beneficiary of the rights of such person under the provider contract.

"Employer" means the employer; any insurance carrier, group self-insured association, or other person providing coverage for the employer's obligation to provide medical service to a claimant under this title; or any third-party administrator acting on behalf of the employer.

"PPO network" means the multiple provider contracts available to an employer pursuant to a PPO network arrangement.

"PPO network arrangement" means an arrangement under which the PPO network arranger sells, conveys, or otherwise transfers to an employer the ability to discount payments or reimbursements to a provider pursuant to the terms of multiple provider contracts to which the PPO network arranger is a direct party.

"PPO network arranger" means a person that operates a PPO network arrangement.

"Provider," "transition date," and "Virginia fee schedule" have the meaning assigned thereto in § 65.2-605. "Provider" includes a provider's employer or professional business entity.

"Provider contract" means an agreement between a contracting entity and a provider pursuant to which the provider agrees to deliver medical services to a claimant under this title in exchange for payment or reimbursement of an agreed-upon amount.

"Third-party administrator" means a person that administers, processes, handles, or pays claims to providers on behalf of an employer.

B. On and after the transition date:

1. No employer shall pay or reimburse a provider for medical services provided to a claimant less than the amount provided for in the applicable Virginia fee schedule or other amount determined as provided in subdivision B 2 or 3 of § 65.2-605 unless:

a. The employer has directly entered into:

(1) A provider contract with the provider;

(2) A contract with a contracting entity that has entered into a provider contract with the provider; or

(3) A contract with a PPO network arranger that authorizes the employer to use a PPO network to derive a benefit from a provider contract; and

b. The provider has agreed to provide medical services to the claimant for an agreed-upon reimbursement or contractual amount as set forth in a provider contract referenced in subdivision a.

2. A person with whom an employer has directly contracted as described in subdivision 1 a shall not sell, lease, or otherwise disseminate data regarding the payment or reimbursement amounts or terms of a provider contract without the express written consent and prior notification of all parties to the provider contract; however, the express written request from, and prior notification to, a provider shall not be required if the provider's identity has been redacted from such data.

3. If an employer uses or relies on a contract described in subdivision 1 a to discount a payment or reimbursement to a provider, the employer shall notify the provider, at the time it remits the payment or reimbursement, of (i) the name of the provider, contracting entity, or PPO network arranger with whom the employer directly contracted and (ii) how, if other than by a direct contract between the employer and the provider, the employer acquired the right to discount the payment or reimbursement to the provider.

4. If an employer uses or relies on a contract with a PPO network arranger described in subdivision 1 a (3) to discount a payment or reimbursement to a provider, the employer shall not shop for the lowest discount for a specific provider among the provider contracts held in multiple PPO networks. This prohibition shall not bar an employer that has entered into a PPO network arrangement and selected a provider contract in the PPO network from availing itself of all discounts provided pursuant to the selected provider contract in the PPO network.

C. Any person who suffers loss as a result of a violation of this section shall be entitled to initiate an action at the Commission to recover actual damages and interest from the date of the violation until entry of the final award. If the Commission finds that the violation resulted from gross negligence or willful misconduct, it may increase damages to an amount not to exceed three times the actual damages.

2016, cc. 279, 290.

§ 65.2-822. Action by State Corporation Commission upon application.

The State Corporation Commission may, if in its judgment it deems such action to be justified after reviewing all information pertaining to the applicant or policyholder available from its records, the records of the Workers' Compensation Commission or from other sources:

1. Refuse to assign an application;

2. Approve the rejection of an application by an insurance carrier;

3. Approve the cancellation of a workers' compensation policy by an insurance carrier; or

4. Refuse to approve the renewal or the reassignment of an expiring policy.

Code 1950, § 65-114.3; 1956, c. 358; 1968, c. 660, § 65.1-121; 1991, c. 355.

§ 65.2-823. Information filed with State Corporation Commission by insurance carrier to be confidential; exception.

Any and all information filed with the State Corporation Commission by an insurance carrier or a rate service organization in connection with an assigned risk shall be confidential and solely for the information of the State Corporation Commission and its staff and shall not be disclosed to any person, including an applicant, policyholder and any other insurance carrier.

However, at the discretion of the State Corporation Commission, such information may be disclosed to any agent or insurer licensed in the Commonwealth for the purpose of procuring coverage in the voluntary market. Such disclosure shall be limited to the insured's name, address, policy expiration, risk identification number, experience modification factor, governing classification, premium, information pertaining to whether the insured has locations in multiple states, and any other information the State Corporation Commission deems appropriate.

Code 1950, § 65-114.4; 1956, c. 358; 1968, c. 660, § 65.1-122; 1991, c. 355; 1993, c. 985.

§ 65.2-824. Disclosures not required of State Corporation Commission; liability for acts or omissions.

A. The State Corporation Commission shall not be required to disclose to any person, including the applicant or policyholder, its reasons for:

1. Refusing to assign an application;

2. Approving the rejection of an application by an insurance carrier;

3. Approving the cancellation of a workers' compensation policy by an insurance carrier; or

4. Refusing to approve the renewal or the reassignment of an expiring policy.

B. The State Corporation Commission shall not nor shall anyone acting for it be held liable for any act or omission in connection with the administration of the duties imposed upon it by the provisions of this chapter, except upon proof of actual malfeasance.

Code 1950, § 65-114.5; 1956, c. 358; 1968, c. 660, § 65.1-123; 1991, c. 355.

Chapter 9 - REPORTS AND RECORDS

§ 65.2-900. Records and reports of accidents.

A. Every employer shall keep a record of all injuries or deaths of its employees which occur in the course of employment. Within ten days after the occurrence of such injury or death, and knowledge of injury as provided in § 65.2-600, a report of the injury or death shall be made and transmitted to the Commission by the employer, its representative or, in the case of an insured employer, its insurance carrier, in accordance with regulations adopted by the Commission which may authorize the transmission of such reports in written, magnetic, electronic or facsimile media. The Commission shall provide forms and instructions for reporting as required by this section. The Commission shall provide the Department of Labor and Industry with such reports.

B. The accident report shall contain the name, nature and location of the business of the employer and the name, age, sex and wages and occupation of the injured employee, and shall state the date and hour of the accident causing the injury and the nature and cause of the injury, together with such other information as may be required by the Commission. However, those injuries deemed minor by the Commission shall be reported in the manner prescribed by the Commission.

Code 1950, § 65-115; 1956, c. 351; 1968, c. 660, § 65.1-124; 1991, c. 355; 1995, c. 86.

§ 65.2-901. Report of number of employees, hours of work, etc.

Every employer shall upon request of the Commission report the number of its employees, hours of their labor and number of days of operation of business.

Code 1950, § 65-117; 1968, c. 660, § 65.1-126; 1991, c. 355.

§ 65.2-902. Failure to make required reports; civil penalty.

A. Any employer, insurance carrier, self-insurer, group self-insurance association, or third party administrator who fails to make any report required by the Commission pursuant to this title shall be assessed a civil penalty of not more than $500 for each failure. If the Commission determines that any such failure is willful, it shall assess a civil penalty of not less than $500 and not more than $5,000. The civil penalty herein provided may be assessed by the Commission in an open hearing with the right of review and appeal as in other cases.

B. Any civil penalty assessed pursuant to this section shall be divided equally between and paid into the administrative fund established in Chapter 10 (§ 65.2-1000 et seq.) and the Uninsured Employer's Fund established in Chapter 12 (§ 65.2-1200 et seq.). The Commission may add the costs of col-

lection of such civil penalty to the aggregate civil penalty owed, in which event such costs shall be paid into the administrative fund established in Chapter 10 (§ 65.2-1000 et seq.).

Code 1950, § 65-118; 1968, c. 660, § 65.1-127; 1970, c. 470; 1991, c. 355; 1993, c. 378; 2014, c. 203.

§ 65.2-903. Records not public.

The records of the Commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public but only to the parties satisfying the Commission of their interest in such records and their right to inspect them; however, the Commission shall make its records about an injured employee available to the Virginia Employment Commission, the Department of Social Services, or the Virginia Retirement System if any such entity requests such records. The Commission shall promulgate rules to ensure that information for the purpose of determining eligibility for employment shall not be provided without the written consent of the employee.

Code 1950, § 65-119; 1968, c. 660, § 65.1-128; 1991, c. 355; 1993, c. 806; 1996, c. 457; 1997, cc. 796, 895; 2002, c. 693.

Chapter 10 - ADMINISTRATIVE FUND AND TAX THEREFOR

§ 65.2-1000. Tax for administrative fund.

For the purpose of paying the salaries and necessary expenses of the Workers' Compensation Commission and its assistants and employees in administering and carrying out the provisions of this title, an administrative fund shall be created and maintained in the following manner:

1. Every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, company, mutual company or association, the parties to any interindemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this Commonwealth against liability for personal injuries to their employees or death caused thereby, under the provisions of this title, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this Commonwealth or on account of business done in this Commonwealth, for such insurance in this Commonwealth, at the rate of 2.5 percent of the amount of such premiums.

2. However, premiums received for insuring liability which exists concurrently under this title and the Federal Coal Mine Health and Safety Act of 1969, as amended, shall be modified in accordance with an equitable premium modification plan approved by the Commission. Such tax shall be in lieu of all other taxes on such premiums, except as provided in §§ 65.2-1101, 65.2-1201, and Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, and shall be assessed and collected as hereinafter provided. But such insurance carriers shall be credited with all cancelled or returned premiums, actually refunded during the year on such insurance, and with premiums on reinsurance assumed.

Code 1950, § 65-120; 1968, c. 660, § 65.1-129; 1975, c. 365; 1977, c. 345; 1984, c. 606; 1991, c. 355; 1996, c. 56.

§ 65.2-1001. Returns.

A. Every such insurance carrier shall, for the twelve months ending December 31 of each year, make a return verified by the affidavits of its president and secretary, or other chief officers or agents, to the Workers' Compensation Commission stating the amount of such premiums and credits during the period covered by such return.

B. The State Corporation Commission shall have access at all times to the records so filed with the Workers' Compensation Commission by such insurance carriers and may require such additional information as the State Corporation Commission deems necessary for the performance of the duties herein conferred upon it.

Code 1950, § 65-121; 1968, c. 660, § 65.1-130; 1991, c. 355.

§ 65.2-1002. Payment of tax.

Every insurance carrier required to make such return shall file the same with the Workers' Compensation Commission within thirty days after the close of the period covered thereby and shall at the same time pay into the state treasury a tax of $2.50 on each $100 of such premiums ascertained as provided in § 65.2-1000, less returned premiums and reinsurance assumed.

Code 1950, § 65-122; 1968, c. 660, § 65.1-131; 1991, c. 355.

§ 65.2-1003. Failure to file return.

If any such insurance carrier shall fail or refuse to make the return required by this title, the State Corporation Commission shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premiums as it may deem just, and the proceedings thereon shall be the same as if the return had been made.

Code 1950, § 65-123; 1968, c. 660, § 65.1-132; 1991, c. 355.

§ 65.2-1004. Withdrawal from business or failure to pay tax.

If any such insurance carrier shall withdraw from business in this Commonwealth before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Comptroller shall at once proceed to collect the same and may employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the state treasury. The suit may be brought by the Comptroller, in his official capacity, in any court of this Commonwealth having jurisdiction. A reasonable attorney's fee may be taxed as costs therein and process may issue to any county of the Commonwealth and may be served as in civil actions, or in the case of an unincorporated association, partnership, interindemnity contract or other plan or scheme, upon any agent of the parties thereto upon whom process may be served under the laws of this Commonwealth.

Code 1950, § 65-124; 1968, c. 660, § 65.1-133; 1991, c. 355.

§ 65.2-1005. Tax exclusive of other taxes.

Any insurance carrier liable to pay a tax upon premiums under this title shall not be liable to pay any other or further tax upon such premiums, or on account thereof, under any other law of this Com-

monwealth, except as provided in §§ 65.2-1101, 65.2-1201, and Chapter 4 (§ 38.2-400 et seq.) of Title 38.2.

Code 1950, § 65-125; 1968, c. 660, § 65.1-134; 1975, c. 365; 1977, c. 345; 1991, c. 355; 1996, c. 56.

§ 65.2-1006. Payroll reports of self-insurers and tax thereon; withholding or providing false or misleading information.

A. Every employer carrying his own risk under the provisions of § 65.2-801 and every employer member of a licensed group self-insurance association shall, under oath, report to the Workers' Compensation Commission his payroll subject to the provisions of this title. Such report shall be made in form prescribed by the Commission and at the time herein provided for premium reports by an insurer. No person required to file this report shall willfully withhold information from or knowingly provide false or misleading information to the Commission. As used herein, the term "information" shall include any false statement made for the purpose of avoiding or diminishing the amount of payroll tax imposed pursuant to this section.

There shall be no liability on the part of and no cause of action against:

1. Any person for furnishing in good faith to the Commission information relating to the investigation of any payroll report when such information is furnished under the requirements of law or at the request or the direction of the Commission;

2. The Commission or any of the Commission's employees or agents, acting in good faith, for investigating any payroll report required to be filed under this section or for the dissemination of any official report related to an official investigation of any such payroll report.

B. The Commission shall assess against such payroll a maintenance fund tax computed by taking 2 1/2 percent: (i) of the basic premiums chargeable against the same or most similar industry or business, taken from the manual insurance rate for compensation then in force in this Commonwealth; (ii) in its discretion, of such premiums modified in accordance with an experience rating determined by the records of the Commission; (iii) in the case of self-insurers covered under the Federal Longshoremen's and Harbor Worker's Compensation Act, of such premiums chargeable under an equitable premium modification plan approved by the Commission; or (iv) in case of self-insurers who are concurrently covered by this title and the Federal Coal Mine Health and Safety Act of 1969, as amended, of such premiums chargeable under an equitable premium modification plan approved by the Commission. Such tax shall be paid as provided in § 65.2-1002 and, if not so paid, the same shall be collected by the Comptroller in the manner provided in § 65.2-1004.

C. The State Corporation Commission shall at all times have access to the reports herein required to be made to the Workers' Compensation Commission by self-insurers for the purpose of performing the duties imposed upon the State Corporation Commission under this title.

D. Any person who fails to comply with the requirements of this section or willfully withholds information from or knowingly provides false or misleading information to the Commission shall be deemed

guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the court or jury trying the case.

Code 1950, § 65-126; 1968, c. 660, § 65.1-135; 1979, c. 463; 1984, cc. 568, 606; 1991, c. 355; 1994, c. 947.

§ 65.2-1007. Disposition of fund.

Upon receiving the payments required by § 65.2-1002, the Comptroller shall place the whole thereof to the credit of the fund for the administration of this title. Such fund shall not be used for any other purpose, except as hereinafter expressly provided. The Workers' Compensation Commission shall administer the fund to carry out the provisions of this title and shall disburse the same as hereinafter directed. If the receipts shall exceed the expenditures for any year and a surplus accrue in the fund in excess of one year's budgeted expenditures, the Commission shall authorize a credit for the ensuing years as provided by § 65.2-1008. No portion of the fund or any surplus accruing therein shall be paid into the general fund of the state treasury, nor shall the fund be administered, handled or disbursed except as provided in this section. All claims for salaries or expenses, when approved by a majority of the members of the Commission, shall be presented to the Comptroller and audited by him under the provisions of Chapter 8 (§ 2.2-800 et seq.) of Title 2.2, and he shall draw his disbursement warrants therefor on the State Treasurer; however, any claim for $2,000 or less may be approved by the Chairman or his designee. All such claims shall show to whom and for what service, material or other things or reason such amounts are to be paid and shall be accompanied by voucher, checks or receipts covering the same, except as to items of less than one dollar.

Code 1950, § 65-127; 1968, c. 660, § 65.1-136; 1976, c. 603; 1980, c. 554; 1991, c. 355.

§ 65.2-1008. When fund in excess of requirement.

If it be ascertained that the tax collected exceeds the total chargeable against the maintenance fund under the provisions of this title, the Workers' Compensation Commission shall authorize a corresponding credit upon the collection for any year or make refunds of taxes collected in such amounts as are necessary to maintain a fund balance not exceeding one year's budgeted expenditures.

Code 1950, § 65-128; 1968, c. 660, § 65.1-137; 1976, c. 603; 1991, c. 355.

Chapter 11 - SECOND INJURY FUND

§ 65.2-1100. Fund created.

There is hereby created a fund to be known as the "Second Injury Fund" to be administered, maintained and disbursed by the Commission as hereinafter provided.

1975, c. 365, § 65.1-138; 1991, c. 355.

§ 65.2-1101. Funding.

A. For the purpose of providing funds for compensation for disability as hereinafter defined, medical treatment and vocational rehabilitative services, a tax of one quarter of one percent shall be assessed,

collected and paid into the state treasury by the same persons and in the same manner as set forth in Chapter 10 (§ 65.2-1000 et seq.) of this title.

B. This tax shall be in addition to the tax for the Commission administrative fund and shall be held by the Comptroller of the Commonwealth solely for the payment of awards against such fund.

C. In any fiscal year in which the Second Injury Fund has to its credit a sum in excess of $250,000, the tax shall be suspended for the ensuing fiscal years and its collection not resumed until the balance in the fund is reduced below $125,000.

1975, c. 365, § 65.1-139; 1980, c. 599; 1991, c. 355.

§ 65.2-1102. Disability defined.

For the purpose of this chapter, disability shall mean: (i) the partial or total loss or loss of use of an arm, hand, leg, foot, eye, finger, toe, or any combination of two or more thereof in an industrial accident and (ii) actual incapacity for work at the claimant's average weekly wage.

1975, c. 365, § 65.1-140; 1980, c. 599; 1991, c. 355.

§ 65.2-1103. When awards entered.

The Commission shall enter awards against the Second Injury Fund in favor of an employer or carrier only upon a finding that: (i) the employee has prior loss or loss of use, supported by medical evidence, of not less than twenty percent of one or more of the members set out in § 65.2-1102; (ii) the employee has suffered in an industrial accident an additional loss or loss of use of any one of the members set out in § 65.2-1102 of not less than twenty percent; (iii) the combination of both impairments has rendered the employee totally or partially disabled as defined in § 65.2-1102; (iv) the carrier or employer has paid the compensation due under §§ 65.2-500 and 65.2-502, and the permanent partial disability due under § 65.2-503 and the medical treatment under § 65.2-603; and (v) the employee is entitled to further compensation for disability which has been paid by the employer or carrier.

1980, c. 599, § 65.1-141.1; 1991, c. 355.

§ 65.2-1104. Award for compensation, medical treatment and vocational rehabilitation.

Upon a determination by the Commission that an employer or carrier has paid compensation, medical expenses or vocational rehabilitation services on behalf of an employee under circumstances as set forth under § 65.2-1103 and if notice of a claim against the Second Injury Fund was given prior to payment of the benefits, the Commission shall enter an award from the Second Injury Fund in favor of such employer or carrier for: (i) reimbursement on a pro rata basis of the compensation paid for further disability as set forth in clause (v) of § 65.2-1103, such prorating to be computed according to the number of weeks each impairment is allowed under the schedule in § 65.2-503; (ii) reimbursement of reasonable medical expenses on the same basis as set forth in subdivision (i) of this section, provided the second injury is to the same previously impaired member but such reimbursement shall not exceed $7,500; and (iii) reimbursement of reasonable vocational rehabilitation training service on the same basis as set forth in subdivision (i) of this section but said reimbursement not to exceed $7,500.

1980, c. 599, § 65.1-142.1; 1991, c. 355.

§ 65.2-1105. Payments by fraud, mistake or improper processing of claim; recovery.

Any payment to the employer or carrier pursuant to this chapter which is later determined by the Commission to have been procured through fraud, mistake or the improper processing of the claim by the carrier shall be recovered from the employer or carrier and credited to the Second Injury Fund. Any subrogation recoveries or other recoveries from a third party or other source shall be shared by the employer or carrier and the Second Injury Fund on a pro rata basis after deducting all reasonable expenses in obtaining the recovery.

1975, c. 365, § 65.1-144; 1980, c. 599; 1991, c. 355.

§ 65.2-1106. Claims and hearings.

Claims against the Second Injury Fund and any hearings on the merits of such claims shall be within the time limits and in the manner otherwise provided for workers' compensation claims. All claims against the Second Injury Fund shall be defended by the Attorney General.

1975, c. 365, § 65.1-145; 1991, c. 355.

Chapter 12 - UNINSURED EMPLOYER'S FUND

§ 65.2-1200. Fund created.

There is hereby created a fund to be known as the "Uninsured Employer's Fund" to be administered, maintained and disbursed by the Commission as hereinafter provided.

1977, c. 345, § 65.1-146; 1991, c. 355.

§ 65.2-1201. Financing; tax.

A. For the purpose of providing funds for compensation benefits awarded against any uninsured or self-insured employer under any provision of this chapter, a tax not to exceed one-half of one percent shall be assessed, collected and paid into the state treasury by the same persons and in the same manner as set forth in Chapter 10 (§ 65.2-1000 et seq.) of this title.

B. This tax shall be in addition to the tax for the Workers' Compensation Commission Administrative Fund and the tax for the Second Injury Fund and shall be held by the Comptroller of the Commonwealth solely for the payment of awards against such fund.

C. At the end of any calendar year in which the Uninsured Employer's Fund has to its credit a sum in excess of the next year's budgeted expenditures, the tax shall be suspended for the ensuing calendar year.

1977, c. 345, § 65.1-147; 1983, c. 421; 1986, c. 177; 1990, c. 606; 1991, c. 355; 1997, c. 99; 1998, c. 388; 2009, c. 219.

§ 65.2-1202. Defense of claims against fund by Attorney General.

Upon being notified by the Commission that a claim is pending before it against an employer who has not complied with the provisions of § 65.2-801, the Attorney General, or his designee, may, in his discretion, appear before the Commission and defend any claim against the Uninsured Employer's Fund.

A decision on the part of the Attorney General not to appear shall be made only after consultation with the Commission. With the leave of the Commission, the Attorney General may enter an appearance in a claim at any stage of the proceedings if he determines that the position of the fund needs to be protected.

1977, c. 345, § 65.1-148; 1988, c. 545; 1991, c. 355.

§ 65.2-1203. Awards.

A. 1. Whenever, following due investigation of a claim for compensation benefits, the Commission determines that (i) the employer of record has failed to comply with the provisions of § 65.2-801 or that a self-insured employer or its surety as required by § 65.2-801 is unable to satisfy an award in whole or in part, and (ii) the claim is compensable, the Commission shall make a provisional award of compensation benefits, or any unpaid balance thereof, without further delay. Thereafter, the Commission shall make a final award concerning such benefits or unpaid balance thereof, in accordance with the provisions of this chapter and all applicable provisions of this title. The Commission shall order payment of any award of compensation benefits pursuant to this chapter from the Uninsured Employer's Fund.

2. After an award has been entered against an employer for compensation benefits under any provision of this chapter, and upon finding that the employer has failed to comply with the provisions of § 65.2-801, or that a self-insured employer or its surety as required by § 65.2-801 is unable to satisfy an award in whole or in part, the Commission shall order the award, or any unpaid balance, to be paid from the Uninsured Employer's Fund after demand has been made by a claimant upon his employer or other uninsured entity which is responsible to pay the award. Such demand may be waived by the Commission for good cause shown.

B. For the purposes of this chapter, an employer who is a former member of a group self-insurance association or group self-insurance pool whose license has been terminated by the State Corporation Commission and whose security deposit with the State Treasurer or surety coverage has been exhausted shall be deemed to be an uninsured employer not in compliance with § 65.2-801. For all such uninsured employers, the Attorney General, or his designee, shall enforce the right of subrogation and recoupment as provided in § 65.2-1204.

1977, c. 345, § 65.1-149; 1983, c. 460; 1988, c. 604; 1991, c. 355; 1993, c. 624; 1997, c. 131; 2009, cc. 285, 336.

§ 65.2-1204. Subrogation and recoupment.

The Commission shall, upon payment of a claim from the Uninsured Employer's Fund, be subrogated to any right to recover damages which the injured employee or his personal representative or any other person may have against his employer or any other party for such injury or death.

The Commission shall, on behalf of the Uninsured Employer's Fund, refer any unsatisfied claim against an uninsured employer to the Attorney General for collection.

1977, c. 345, § 65.1-150; 1991, c. 355.

§ 65.2-1205. Notification of change in earnings; change in award.

The burden shall be upon the claimant to immediately notify the Commission in writing of any increase or decrease in his earnings. After ten days' notice to the claimant and the Attorney General, the Commission may, upon its own motion or upon the motion of any party in interest, modify or terminate an award as conditions may require.

1977, c. 345, § 65.1-151; 1991, c. 355.

§ 65.2-1206. Payments procured by fraud, mistake or unreported change in condition; recovery.

Any payment to a claimant pursuant to this chapter which is later determined by the Commission to have been procured by fraud, mistake or an unreported change in condition, shall be recovered from the claimant and credited to the Uninsured Employer's Fund.

1977, c. 345, § 65.1-152; 1991, c. 355.

Chapter 13 - PEER REVIEW OF MEDICAL COSTS [Repealed]

§§ 65.2-1300 through 65.2-1310. Repealed.

Repealed by Acts 2016, cc. 279 and 290, cl. 3, effective March 7, 2016.