# CODE OF VIRGINIA


## Title 40.1

Labor and Employment

# Title 40.1 - LABOR AND EMPLOYMENT

## Chapter 1 - DEPARTMENT OF LABOR AND INDUSTRY

### § 40.1-1. Department continued; powers and duties generally; delegation of authority concerning occupational health.

The Department of Labor and Industry, hereinafter referred to as the Department, is continued as a department of the state government; the Department shall be responsible for discharging the provisions of Title 40.1. All powers and duties conferred and imposed on the Bureau of Labor and Industry by any other law are hereby conferred upon and vested in the Department of Labor and Industry. The Department shall be responsible for administering and enforcing occupational safety and occupational health activities as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), in accordance with the state plan for enforcement of that act; however, nothing in the occupational safety and health provisions of this title or regulations adopted hereunder shall apply to working conditions of employees or duties of employers with respect to which the Federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of the federal act.

Code 1950, § 40-1; 1962, c. 66; 1970, c. 321; 1972, c. 567; 1973, c. 425; 1979, c. 354; 1984, c. 590; 1985, c. 449; 1995, c. 373.

### § 40.1-2. Definitions.

As used in this title, unless the context clearly requires otherwise, the following terms have the following meanings:

"Board" means the Safety and Health Codes Board.

"Business establishment" means any proprietorship, firm or corporation where people are employed, permitted or suffered to work, including agricultural employment on a farm.

"Commission" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to "Commissioner" shall include his authorized representatives.

"Department" means the Department of Labor and Industry.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs. "Domestic service" does not include work that is irregular, uncertain, or incidental in nature and duration.

"Employ" shall include to permit or suffer to work.

"Employee" means any person who, in consideration of wages, salaries or commissions, may be permitted, required or directed by any employer to engage in any employment directly or indirectly.

"Employer" means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs another to work for wages, salaries, or on commission and shall include any similar entity acting directly or indirectly in the interest of an employer in relation to an employee.

"Female" or "woman" means a female 18 years of age or over.

"Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors, shafts, tunnels, including machinery being operated on farms in connection with the production or harvesting of agricultural products.

Code 1950, § 40-1.1; 1962, c. 66; 1966, c. 90; 1970, c. 321; 1972, c. 567; 1973, c. 425; 1985, c. 448; 2004, c. 294; 2021, Sp. Sess. I, cc. 509, 513.

**§ 40.1-2.01. Certified mail; subsequent mail or notices may be sent by regular mail.**

Whenever in this title the Board, the Commissioner, or the Department 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 Board, the Commissioner, or the Department may be sent by regular mail.

2011, c. 566.

**§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.**

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the program that shall include provisions for (i) the issuance of proposed penalties; (ii) the payment of such penalties or a negotiated sum in lieu of such penalties; (iii) the deposit of such payments into the general fund of the state treasury; (iv) fair hearings, including judicial review; and (v) other sanctions to be applied for violations.

1973, c. 425; 2016, c. 526.

**§ 40.1-3. Title provides for safety, health and welfare of employees.**

The provisions of this title are intended to provide solely for the safety, health and welfare of employees and the benefits thereof shall not run to any other person nor shall a third party have any right of action for breach of any provision of this title except as herein otherwise specifically provided.

Code 1950, § 40-1.2; 1962, c. 66; 1970, c. 321.

### § 40.1-4. Repealed.

Repealed by Acts 1984, c. 734.

### § 40.1-4.1. Annual report.

The Department shall submit an annual report to the Governor and General Assembly which contains statistical information derived from its programs and activities.

1984, c. 734; 2004, c. 650.

### § 40.1-5. Governor to appoint Commissioner of Labor and Industry.

The Governor shall appoint, by and with the consent of the General Assembly, some suitable person identified with the labor interests of the Commonwealth, who shall be designated Commissioner of Labor and Industry. The Commissioner shall, upon the request of the Governor, furnish such information as he may require. The Commissioner shall serve at the pleasure of the Governor for a term coincident with that of the Governor.

Code 1950, § 40-3; 1962, c. 66; 1970, c. 321; 1978, c. 372.

### § 40.1-6. Powers and duties of Commissioner.

The Commissioner shall:

1. Have general supervision and control of the Department;

2. Enforce the provisions of this title and shall cause to be prosecuted all violations of law relating to employers or business establishments before any court of competent jurisdiction;

3. Make such rules and regulations as may be necessary for the enforcement of this title and procedural rules as are required to comply with the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). All such rules and regulations shall be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2;

4. In the discharge of his duties, have power to take and preserve testimony, examine witnesses, and administer oaths and to file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within 30 days of the receipt of such list of questions;

5. Have power to appoint such representatives as may be necessary to aid the Commissioner in his work, with the duties of such representatives to be prescribed by the Commissioner;

6. Determine the prevailing wage required to be paid under a public contract for public works as provided in § 2.2-4321.3 and perform all other duties imposed on the Commissioner under such section. Any determination of the prevailing wage rate made by the Commissioner shall be based on

applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended;

7. Have power to require that accident, injury, and occupational illness records and reports be kept at any place of employment and that such records and reports be made available to the Commissioner or his duly authorized representatives upon request, and to require employers to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this title;

8. Have power, upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. To enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment where work is performed by an employee of any employer in this Commonwealth; and

b. To inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, without prior notice unless such notice is authorized by the Commissioner or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have power to seek from a court having equity jurisdiction an order compelling such entry or inspection;

9. Make rules and regulations governing the granting of temporary or permanent variances from all standards promulgated by the Board under this title. Any interested or affected party may appeal to the Board, the Commissioner's determination to grant or deny such a variance. The Board may, as it sees fit, adopt, modify, or reject the determination of the Commissioner;

10. Have authority to issue orders to protect the confidentiality of all information reported to or otherwise obtained by the Commissioner, the Board, or the agents or employees of either that contains or might reveal a trade secret. Such information shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this title. Violations of such orders shall be punishable as civil contempt upon application to the Circuit Court of the City of Richmond. It shall be the duty of each employer to notify the Commissioner or his representatives of the existence of trade secrets where he desires the protection provided herein; and

11. Serve as executive officer of the Virginia Safety and Health Codes Board and of the Apprenticeship Council and see that the rules, regulations, and policies that they promulgate are carried out.

Code 1950, § 40-4; 1962, c. 66; 1970, c. 321; 1972, c. 567; 1973, c. 425; 1984, cc. 590, 734; 1987, c. 165; 1997, c. 919; 1998, c. 97; 2004, c. 592; 2020, cc. 1216, 1243.

**§ 40.1-7. Attorney for the Commonwealth to prosecute on request of Commissioner.**

The attorney for the Commonwealth of the proper county or city, upon the request of the Commissioner, or any of his authorized representatives, shall prosecute any violation of law or rule or regulation adopted thereunder which it is made the duty of the Commissioner to enforce.

Code 1950, § 40-5; 1962, c. 66; 1970, c. 321.

### § 40.1-8. Other officers to furnish information; protected health information under certain circumstances.

A. All State, county, town and city officers shall furnish the Commissioner, upon his request, such statistical or other information as may be in their possession as such officers that will assist the Department in the discharge of its duties.

B. In the discharge of his duties to ensure compliance with federal law and regulation relating to the health and safety of Virginia's workforce and prevention of work-related injuries, disabilities, and deaths, each licensed emergency medical services agency shall release to the Commissioner or his designee the prehospital patient care report required by § 32.1-116.1 when such records are requested for a patient who has suffered an injury, disability or death resulting from an accident or illness that occurred while engaged in his employment without obtaining consent or authorization for such disclosure from the person who is the subject of the records. The patient's health records shall be confidential. The Commissioner and any designee shall only redisclose such protected health information in compliance with the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended.

Code 1950, § 40-6; 1962, c. 66; 1970, c. 321; 2004, c. 163.

### § 40.1-9. How Department maintained.

The Department shall be maintained from such appropriations as the General Assembly may make for the purpose. The compensation of the Commissioner and of all other employees of the Department shall be fixed and paid in accordance with law.

Code 1950, § 40-7; 1962, c. 66; 1970, c. 321.

### § 40.1-10. Offenses in regard to examinations, inspections, etc.

If any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of such examination as indicated in § 40.1-6, or if any person to whom a written or printed list of such interrogatories has been furnished by the Commissioner shall neglect or refuse to answer fully and return the same under oath, or if any person in charge of any business establishment shall refuse admission to, or obstruct in any manner the inspection or investigation of such establishment or the proper performance of the authorized duties of the Commissioner or any of his representatives, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding $100 nor less than $25 or imprisoned in jail not exceeding 90 days, or both.

Code 1950, § 40-8; 1962, c. 66; 1970, c. 321.

### § 40.1-11. Using or revealing information gathered.

Neither the Commissioner nor any employee of the Department shall make use of or reveal any information or statistics gathered from any person, company or corporation for any purposes other than those of this title.

Code 1950, § 40-9; 1962, c. 66; 1970, c. 321; 1984, c. 590.

### § 40.1-11.1. Employment of illegal immigrants.

It shall be unlawful and constitute a Class 1 misdemeanor for any employer or any person acting as an agent for an employer, or any person who, for a fee, refers an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States for employment to an employer, or an officer, agent or representative of a labor organization to knowingly employ, continue to employ, or refer for employment any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.

Permits issued by the United States Department of Justice authorizing an alien to work in the United States shall constitute proof of eligibility for employment.

All employment application forms used by State and local governments and privately owned businesses operating in the Commonwealth on and after January 1, 1978, shall ask prospective employees if they are legally eligible for employment in the United States.

The provisions of this section shall not be deemed to require any employer to use employment application forms.

1977, c. 438; 1979, c. 472.

### § 40.1-11.2. Participation in E-Verify program.

All agencies of the Commonwealth shall be enrolled in the E-Verify program by December 1, 2012; and on and after December 1, 2012, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.

2010, c. 633.

### § 40.1-11.3. Human trafficking hotline; posted notice required; civil penalty.

A. Any employer who (i) operates a business that provides entertainment commonly called stripteasing or topless entertaining or entertainment that has employees who are not clad above or below the waist and (ii) fails to post notice of the existence of a human trafficking hotline to alert potential human trafficking victims of the availability of assistance, is subject to a civil penalty of $500. Civil penalties under this subsection shall be assessed by the Department and paid to the Literary Fund. The notice required by this subsection shall be posted in the same location where other employee notices required by state or federal law are posted. The provisions of this subsection shall not apply to businesses described in this subsection providing entertainment in theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances,

when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

B. Any employer who (i) operates a truck stop and (ii) fails to post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking of the availability to report crimes or gain assistance, which failure is not cured within 72 hours following notification to the employer of such failure by the Department, is subject to a civil penalty of $100 per truck stop. Civil penalties under this subsection shall be assessed by the Department and paid to the Literary Fund, provided that no civil penalty shall be assessed under this subsection prior to January 1, 2014. The notice required by this subsection shall be posted in the same location where other employee notices required by state or federal law are posted. As used in this subsection, "truck stop" means a facility that is capable of fueling a qualified highway vehicle that bears an IFTA identification marker as those terms are defined in § 58.1-2700.

C. The Department shall (i) determine the content of the notice which shall include the National Human Trafficking Resource Center Hotline, (ii) determine the size of the notice, (iii) determine the languages in which the notice is to be posted, and (iv) publish the notice size and notice languages, and make the notice available in each of those languages, on the website of the Department and by any other means of publication the Department deems appropriate. The Department is not otherwise required to produce or distribute the notice. An employer is not required to use a notice produced by the Department, provided the notice complies with guidelines established by the Department. The Department may certify that a notice produced by an employer or other entity complies with the requirements of this section.

2012, c. 630; 2013, c. 304.

### § 40.1-11.4. Seizure first aid posters.

The Department shall provide all employers and employees in the Commonwealth with in-color informational posters, at least 8.5 inches by 11 inches in size, with respect to rendering seizure first aid. The information shall be disseminated by means determined by the Department, including electronically, and the information approved by the Department shall be fully consistent with information and guidelines developed by the Epilepsy Foundation of America and any such successor organization. Each employer of 25 or more employees in the Commonwealth shall physically post information on seizure first aid provided by the Department in a prominent position in the employer's workplace that is visible to employees. For the purposes of this section, "seizure first aid" means procedures to respond, attend, and provide comfort and safety to an individual suffering from a seizure. "Seizure first aid" does not include training to medically treat an individual suffering from a seizure. Nothing in this section shall be construed to supersede any other provision of law, including the exemption from liability for a person rendering emergency care in good faith without compensation pursuant to the provisions of § 8.01-225.

2022, c. 162.

## Chapter 2 - EMPLOYMENT AGENCIES [Repealed]

### §§ 40.1-12 through 40.1-21. Repealed.

Repealed by Acts 1978, c. 840.

## Chapter 3 - PROTECTION OF EMPLOYEES

## Article 1 - General Provisions

### § 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.

(1) The Safety and Health Codes Commission is continued and shall hereafter be known as the Safety and Health Codes Board. The Board shall consist of fourteen members, twelve of whom shall be appointed by the Governor. One member shall, by reason of previous vocation, employment or affiliation, be chosen to represent labor in the manufacturing industry; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent labor in the construction industry; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent industrial employers; one member shall be chosen from and be a representative of the general public; one member shall be a representative of agricultural employers; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent agricultural employees; one member shall, by reason of previous vocation, employment or affiliation, be chosen to represent construction industry employers; one member shall be a representative of an insurance company; one member shall be a labor representative from the boiler pressure vessel industry; one member shall be a labor representative knowledgeable in chemicals and toxic substances; one member shall be an employer representative of the boiler pressure vessel industry; one member shall be an industrial representative knowledgeable in chemical and toxic substances, and the Director of the Department of Environmental Quality or his duly authorized representative shall be a member ex officio with full membership status. The Commissioner of Health or his duly authorized representative shall also be a member ex officio with full membership status.

(2) The first appointive members shall be appointed as follows: one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Of the members appointed to represent the construction industry, one shall be appointed for the term of two years and one shall be appointed for the term of four years. Succeeding appointments shall be for terms of four years each but other vacancies shall be filled by appointment for the unexpired term.

(3) The Board shall annually select a chairman from its members. The Board shall meet at least once every six months; other meetings may be held upon call of the chairman or any three members of the Board. Five members of the Board shall constitute a quorum.

(4) The Board shall study and investigate all phases of safety in business establishments, the application of this title thereto, and shall serve as advisor to the Commissioner.

(5) The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in

places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions established under this title. The Commissioner shall enforce such rules and regulations. All such rules and regulations shall be designed to protect and promote the safety and health of such employees. In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. Such standards when applicable to products which are distributed in interstate commerce shall be the same as federal standards unless deviations are required by compelling local conditions and do not unduly burden interstate commerce.

(6) Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 shall apply to the adoption of rules and regulations under this section and to proceedings before the Board.

(6a) The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia, if it determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from such danger. The publication mentioned herein shall constitute notice that the Board intends to adopt such standard within a period of six months. The Board by similar publication shall prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the adoption of a permanent standard. The emergency temporary standard shall expire within six months or when superseded by a permanent standard, whichever occurs first, or when repealed by the Board.

(7) Any person who may be adversely affected by a standard issued under this title may challenge the validity of such standard in the Circuit Court of the City of Richmond by declaratory judgment. The determination of the Safety and Health Codes Board shall be conclusive if supported by substantial evidence in the record considered as a whole. Adoption of a federal occupational safety and health standard shall be deemed to be sufficient evidence to support promulgation of such standard. The filing of a petition for declaratory judgment shall not operate as a stay of the standard unless the court issues a preliminary injunction.

Code 1950, § 40-20; 1962, c. 66; 1968, c. 272; 1970, cc. 321, 649; 1972, c. 567; 1973, c. 425; 1974, c. 195; 1976, c. 607; 1979, c. 656; 1980, c. 728; 1984, c. 590; 1985, c. 448; 1987, c. 165; 1988, c. 467.

**§ 40.1-22.1. Governor authorized to enter certain agreements.**

The Governor of Virginia is hereby authorized to enter into:

1. Such agreements with the United States Occupational Safety and Health Administration as are necessary to provide training for the employees of the Virginia Department of Labor and Industry and other appropriate agencies of the Commonwealth to assist in the enforcement of Public Law 91-596.

2. Reciprocal agreements with the appropriate authorities of any state within the United States and of the District of Columbia, with respect to the collection of claims for wages and other demands upon claims filed with the Department of Labor and Industry.

1976, c. 607; 1997, c. 282.

### §§ 40.1-23 through 40.1-25.1. Repealed.

Repealed by Acts 1988, c. 340, effective January 1, 1989.

### § 40.1-26. Repealed.

Repealed by Acts 1979, c. 631.

### § 40.1-27. Preventing employment by others of former employee.

No person doing business in this Commonwealth, or any agent or attorney of such person after having discharged any employee from the service of such person or after any employee shall have voluntarily left the service of such person shall willfully and maliciously prevent or attempt to prevent by word or writing, directly or indirectly, such discharged employee or such employee who has voluntarily left from obtaining employment with any other person. For violation of this section the offender shall be guilty of a misdemeanor and shall, on conviction thereof, be fined not less than $100 nor more than $500. But this section shall not be construed as prohibiting any person from giving on application for any other person a truthful statement of the reason for such discharge, or a truthful statement concerning the character, industry and ability of such person who has voluntarily left.

Code 1950, § 40-22; 1970, c. 321.

### § 40.1-27.1. Discharge of employee for absence due to work-related injury prohibited.

It shall be an unfair employment practice for an employer who has established an employment policy of discharging employees who are absent from work for a specified number of days to include in the computation of an employee's work absence record any day that such employee is absent from work due to a compensable absence under Title 65.2; provided, that such compensable absences can be calculated into an employee's work record for purposes of discharge after all steps of the excessive absenteeism policy have been exhausted. An employer shall not be held in violation of this section if the employee's absence exceeds six months or if the employer's circumstances have changed during such employee's absence so as to make it impossible or unreasonable not to discharge such employee.

1989, c. 572.

### § 40.1-27.2. Preference for veterans and spouses.

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

"Disabled veteran" means a veteran who has been found by the U.S. Department of Veterans Affairs or by the retirement board of one of the several branches of the armed forces to have a compensable service-connected permanent and total disability.

"Veteran" has the same meaning ascribed to such term in § 2.2-2903.

B. An employer may grant preference in hiring and promotion to a veteran or the spouse of a disabled veteran.

C. Granting preference under subsection B does not violate any local or state equal employment opportunity law.

2014, c. 740.

### § 40.1-27.3. Retaliatory action against employee prohibited.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee:

1. Or a person acting on behalf of the employee in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official;

2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;

3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or

5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation.

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

2. Permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth; or

3. Permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

C. A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an

equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorney fees and costs.

2020, c. 1136.

**§ 40.1-27.4. (Effective until January 1, 2024) Discipline for employee's medicinal use of cannabis oil prohibited.**

A. As used in this section, "cannabis oil" means the same as that term is defined in § 54.1-3408.3.

B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 54.1-3408.3.

C. Notwithstanding the provisions of subsection B, nothing in this section shall (i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours, (ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.

2021, Sp. Sess. I, c. 395.

**§ 40.1-27.4. (Effective January 1, 2024) Discipline for employee's medicinal use of cannabis oil prohibited.**

A. As used in this section, "cannabis oil" means the same as that term is defined in § 4.1-1600.

B. No employer shall discharge, discipline, or discriminate against an employee for such employee's lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease pursuant to § 4.1-1601.

C. Notwithstanding the provisions of subsection B, nothing in this section shall (i) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours, (ii) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (iii) require any defense industrial base sector employer or prospective employer, as defined by the U.S. Cybersecurity and Infrastructure Security Agency, to hire or retain any applicant or employee who tests positive for tetrahydrocannabinol (THC) in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test.

2021, Sp. Sess. I, c. 395; 2023, cc. 740, 773.

**§ 40.1-28. Unlawful to require payment for medical examination as condition of employment.**

It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any medical records required by the employer as a condition of employment.

Any employer who violates the provisions of this section shall be subject to a civil penalty not to exceed $100 for each violation. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following its receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact.

Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties which are not contested by employers.

Code 1950, § 40-22.1; 1952, c. 525; 1962, c. 66; 1970, c. 321; 1973, c. 425; 1982, c. 84; 2015, c. 285.

**§ 40.1-28.01. Nondisclosure or confidentiality agreement; provisions regarding sexual assault or sexual harassment; condition of employment.**

A. No employer shall require an employee or a prospective employee to execute or renew any provision in a nondisclosure or confidentiality agreement, including any provision relating to nondisparagement, that has the purpose or effect of concealing the details relating to a claim of sexual assault pursuant to § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4 or a claim of sexual harassment as defined in § 30-129.4 as a condition of employment. Any such provision is against public policy and is void and unenforceable.

B. This section shall in no way limit other grounds that exist at law or in equity for the unenforceability of any such agreement or any provision of such agreement.

2019, c. 131; 2023, c. 511.

**§§ 40.1-28.1 through 40.1-28.4:1. Repealed.**

Repealed by Acts 2005, c. 823, effective July 1, 2005.

**§ 40.1-28.5. Repealed.**

Repealed by Acts 2004, c. 608.

### § 40.1-28.6. Equal pay irrespective of sex.

No employer having employees shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this section shall be deemed to be unpaid wages or unpaid overtime compensation and the employee whose wages have been wrongfully withheld in violation of this section shall have a right of action therefor to recover damages to the extent of two times the amount of wages so withheld.

This section shall not apply to employers covered by the Fair Labor Standards Act of 1938 as amended. Every action under this section shall be brought within two years next after the right to bring the same shall have accrued; provided, however, that nothing herein shall be construed to give rise to a cause of action for work performed prior to July 1, 1974.

1974, c. 405.

### § 40.1-28.7. Repealed.

Repealed by Acts 1985, c. 421.

### § 40.1-28.7:1. Genetic testing or genetic characteristics as a condition of employment.

A. No employer shall:

1. Request, require, solicit or administer a genetic test, as defined in § 38.2-508.4, to any person as a condition of employment; or

2. Refuse to hire, fail to promote, discharge or otherwise adversely affect any terms or conditions of employment of any employee or prospective employee solely on the basis of a genetic characteristic, as defined in § 38.2-508.4, or the results of a genetic test, regardless of how the employer obtained such information or results. Nothing in this section shall preclude the use of information related to a criminal investigation.

B. The employee may bring an action in a court of competent jurisdiction over the employer who took adverse action against the employee in violation of this section. Any such action shall be brought within 180 days from the date of the adverse action. The court may, in its discretion, award actual or punitive damages, including back pay with interest at the judgment rate as provided in § 6.2-302, or injunctive relief.

C. Nothing in this section shall be construed to require the Department of Labor and Industry to conduct any investigations or enforcement actions.

D. As used in subdivision A 2 of this section, "terms and conditions of employment" shall not include any long term care, life or disability insurance policy.

2002, cc. 565, 659.

**§ 40.1-28.7:2. Employers to allow crime victims leave to attend criminal proceedings.**

A. As used in this section:

"Criminal proceedings" means a proceeding at which the victim has the right or opportunity to appear involving a crime against the victim, including:

1. The initial appearance of the person suspected of committing the criminal offense against the victim;

2. Any proceeding in which the court considers the post-arrest release of the person accused of committing a criminal offense against the victim or the conditions of that release;

3. Any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court;

4. Any sentencing proceeding;

5. Any proceeding in which postconviction release from confinement is considered;

6. Any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation of a person who is convicted of committing a criminal offense against the victim; or

7. Any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

"Undue hardship" means a significant difficulty and expense to a business and includes the consideration of the size of the employer's business and the employer's critical need of the employee.

"Victim" has the same meaning ascribed to the term in § 19.2-11.01.

B. Every employer shall allow an employee who is a victim of a crime to leave work to be present at all criminal proceedings relating to a crime against the employee, as long as the employee has provided the employer with a copy of the form provided to the employee by the law-enforcement agency pursuant to subsection A of § 19.2-11.01 and, if applicable, provided the employer a copy of the notice of each scheduled criminal proceeding that is provided to the employee as victim. However, an employer may limit the leave provided under this section if the employee's leave creates an undue hardship to the employer's business.

C. An employer shall not dismiss an employee who is a victim of a crime because the employee exercises the right to leave work pursuant to subsection B.

D. An employer is not required to compensate an employee who is a victim of a crime when the employee leaves work pursuant to subsection B.

E. An employer shall not refuse to hire or employ, to bar or to discharge from employment, or to discriminate against, an individual in compensation or other terms, conditions, or privileges of employment because the individual leaves work to attend a criminal proceeding pursuant to this section.

2007, c. 423.

### § 40.1-28.7:3. Earned income tax credit; employer notice to employee.

Every employer shall post in the same location where other employee notices required by state or federal law are posted any notice provided by the Virginia Department of Social Services that informs employees that they may be eligible for federal and state earned income tax credits and may apply for the credit on their tax returns or receive the credit in advance payments during the year.

2009, c. 698.

### § 40.1-28.7:4. Release of employee's personal identifying information.

A. As used in this section, "personal identifying information" means any of the following items of information about a current or former employee: home telephone number, mobile telephone number, email address, shift times, or work schedule.

B. An employer shall not, unless an exemption described in subsection C applies, be required to release, communicate, or distribute to a third party any current or former employee's personal identifying information.

C. The provisions of subsection B shall not apply to a release, communication, or distribution of personal identifying information that is:

1. Required pursuant to any applicable provision of federal law that preempts the provisions of this section or of state law that requires an employer to release, communicate, or distribute personal identifying information;

2. Ordered by a court of competent jurisdiction;

3. Required pursuant to a warrant issued by a judicial officer; or

4. Required by a subpoena issued in a pending civil or criminal case, or by discovery in a civil case.

2013, c. 495.

### § 40.1-28.7:5. Social media accounts of current and prospective employees.

A. As used in this section:

"Employer" includes, in addition to the persons enumerated in the definition of employer in § 40.1-2, (i) any unit of state or local government and (ii) any agent, representative, or designee of a person or unit of government that constitutes an employer.

"Social media account" means a personal account with an electronic medium or service where users may create, share, or view user-generated content, including, without limitation, videos, photographs, blogs, podcasts, messages, emails, or website profiles or locations. "Social media account" does not include an account (i) opened by an employee at the request of an employer; (ii) provided to an employee by an employer such as the employer's email account or other software program owned or operated exclusively by an employer; (iii) set up by an employee on behalf of an employer; or (iv) set up by an employee to impersonate an employer through the use of the employer's name, logos, or trademarks.

B. An employer shall not require a current or prospective employee to:

1. Disclose the username and password to the current or prospective employee's social media account; or

2. Add an employee, supervisor, or administrator to the list of contacts associated with the current or prospective employee's social media account.

C. If an employer inadvertently receives an employee's username and password to, or other login information associated with, the employee's social media account through the use of an electronic device provided to the employee by the employer or a program that monitors an employer's network, the employer shall not be liable for having the information but shall not use the information to gain access to an employee's social media account.

D. An employer shall not:

1. Take action against or threaten to discharge, discipline, or otherwise penalize a current employee for exercising his rights under this section; or

2. Fail or refuse to hire a prospective employee for exercising his rights under this section.

E. This section does not prohibit an employer from viewing information about a current or prospective employee that is publicly available.

F. Nothing in this section:

1. Prevents an employer from complying with the requirements of federal, state, or local laws, rules, or regulations or the rules or regulations of self-regulatory organizations; or

2. Affects an employer's existing rights or obligations to request an employee to disclose his user-name and password for the purpose of accessing a social media account if the employee's social media account activity is reasonably believed to be relevant to a formal investigation or related pro-ceeding by the employer of allegations of an employee's violation of federal, state, or local laws or reg-ulations or of the employer's written policies. If an employer exercises its rights under this subdivision,

the employee's username and password shall only be used for the purpose of the formal investigation or a related proceeding.

2015, c. 576.

### § 40.1-28.7:6. Employers to allow leave for volunteer members of Civil Air Patrol; civil remedy.

A. Any employee who is a volunteer member of the Civil Air Patrol shall be entitled to leaves of absence from his employment without loss of seniority, accrued leave, benefits, or efficiency rating on all days during which such employee is (i) engaged in training for emergency missions with the Civil Air Patrol, not to exceed 10 workdays per federal fiscal year, or (ii) responding to an emergency mission as a Civil Air Patrol volunteer, not to exceed 30 workdays per federal fiscal year.

B. Any employee requesting leave pursuant to this section shall provide (i) certification that the employee has been authorized by the United States Air Force, the Governor, or a department, division, agency, or political subdivision of the state to respond to or train for an emergency mission and (ii) verification from the Civil Air Patrol of the emergency need of the employee's volunteer service.

C. An employer may treat leaves of absence pursuant to this section as unpaid leave. No employer shall require an employee to exhaust any other leave to which the employee is entitled prior to such leaves of absence. Nothing in this subsection shall be construed to prevent an employer from providing paid leave during such leaves of absence.

D. Any employee aggrieved by a violation of any provision of this section may bring a civil action to enforce such provision. Any employee who is successful in such action shall be entitled to recover only lost wages, reasonable attorney fees, and court costs incurred in such action.

2018, c. 277.

### § 40.1-28.7:7. Misclassification of workers.

A. An individual who has not been properly classified as an employee may bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. An individual's representative may bring the action on behalf of the individual. If the court finds that the employer has not properly classified the individual as an employee, the court may award the individual damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the individual in bringing the action.

B. In a proceeding under subsection A, an individual who performs services for a person for remuneration shall be presumed to be an employee of the person that paid such remuneration, and the person that paid such remuneration shall be presumed to be the employer of the individual who was paid for performing the services, unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines.

C. As used in this section, "Internal Revenue Service guidelines" means the most recent version of the guidelines published by the Internal Revenue Service for evaluating independent contractor status, including its interpretation of common law doctrine on independent contractors, and any regulations that the Internal Revenue Service may promulgate regarding determining whether an employee is an independent contractor, including 26 C.F.R. § 31.3121(d)-1.

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

2020, cc. 203, 381; 2021, Sp. Sess. I, c. 448.

**§ 40.1-28.7:8. Covenants not to compete prohibited as to low-wage employees; civil penalty.**

A. As used in this section:

"Covenant not to compete" means a covenant or agreement, including a provision of a contract of employment, between an employer and employee that restrains, prohibits, or otherwise restricts an individual's ability, following the termination of the individual's employment, to compete with his former employer. A "covenant not to compete" shall not restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.

"Low-wage employee" means an employee whose average weekly earnings, calculated by dividing the employee's earnings during the period of 52 weeks immediately preceding the date of termination of employment by 52, or if an employee worked fewer than 52 weeks, by the number of weeks that the employee was actually paid during the 52-week period, are less than the average weekly wage of the Commonwealth as determined pursuant to subsection B of § 65.2-500. "Low-wage employee" includes interns, students, apprentices, or trainees employed, with or without pay, at a trade or occupation in order to gain work or educational experience. "Low-wage employee" also includes an individual who has independently contracted with another person to perform services independent of an employment relationship and who is compensated for such services by such person at an hourly rate that is less than the median hourly wage for the Commonwealth for all occupations as reported, for the preceding year, by the Bureau of Labor Statistics of the U.S. Department of Labor. For the purposes of this section, "low-wage employee" shall not include any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer.

B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-wage employee.

C. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements intended to prohibit the taking, misappropriating, threating to misappropriate, or sharing of certain information, including trade secrets, as defined in § 59.1-336, and proprietary or confidential information.

D. A low-wage employee may bring a civil action in a court of competent jurisdiction against any former employer or other person that attempts to enforce a covenant not to compete against such employee in violation of this section. An action under this section shall be brought within two years of the latter of (i) the date the covenant not to compete was signed, (ii) the date the low-wage employee learns of the covenant not to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any step to enforce the covenant not to compete. The court shall have jurisdiction to void any covenant not to compete with a low-wage employee and to order all appropriate relief, including enjoining the conduct of any person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages, and reasonable attorney fees and costs. No employer may discharge, threaten, or otherwise discriminate or retaliate against a low-wage employee for bringing a civil action pursuant to this section.

E. Any employer that violates the provisions of subsection B as determined by the Commissioner shall be subject to a civil penalty of $10,000 for each violation. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

F. If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the former employer or other person who attempts to enforce a covenant not to compete against such plaintiff.

G. Every employer shall post a copy of this section or a summary approved by the Department in the same location where other employee notices required by state or federal law are posted. An employer that fails to post a copy of this section or an approved summary of this section shall be issued by the Department a written warning for the first violation, shall be subject to a civil penalty not to exceed $250 for a second violation, and shall be subject to a civil penalty not to exceed $1,000 for a third and each subsequent violation as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund.

The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and to pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

2020, cc. 948, 949, § 40.1-28.7:7.

**§ 40.1-28.7:9. Limiting employees' sharing wage information with other persons prohibited; civil penalty.**

A. No employer shall discharge from employment or take other retaliatory action against an employee because the employee (i) inquired about or discussed with, or disclosed to, another employee any information about either the employee's own wages or other compensation or about any other employee's wages or other compensation or (ii) filed a complaint with the Department alleging a violation of this section. However, the provisions of this section shall not apply to employees who have access to the compensation information of other employees or applicants for employment as part of their essential job functions who disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with a legal duty to furnish information.

B. Any employer that violates the provisions of this section shall be subject to a civil penalty not to exceed $100 for each violation. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final. Civil penalties under this section shall be assessed by the Commissioner and paid to the Literary Fund. The Commissioner shall prescribe procedures for the payment of proposed penalties that are not contested by employers.

C. The Commissioner or his authorized representative shall have the right to petition a circuit court for injunctive or such other relief as may be necessary for enforcement of this section.

2020, c. 1210, § 40.1-28.7:7.

### § 40.1-28.7:10. Prohibited use of employee's social security number; civil penalty.

A. No employer shall (i) use an employee's social security number or any derivative thereof as such employee's identification number or (ii) include an employee's social security number or any number derived thereof on any identification card or badge, any access card or badge, or any other similar card or badge issued to such employee.

B. Any employer that knowingly violates the provisions of this section shall be subject to a civil penalty not to exceed $100 for each violation. The Commissioner shall notify any employer that he alleges has violated any provision of this section by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final. Civil penalties under this section shall be assessed by the Commissioner and paid to the Literary

Fund. The Commissioner shall prescribe procedures for the payment of proposed penalties that are not contested by employers.

C. The Commissioner or his authorized representative shall have the right to petition a circuit court for injunctive or such other relief as may be necessary for enforcement of this section.

2023, c. 135.

## Article 1.1 - VIRGINIA MINIMUM WAGE ACT

### § 40.1-28.8. Short title.

This article shall be known as the Virginia Minimum Wage Act.

1975, c. 530.

### § 40.1-28.9. (Effective until July 1, 2030) Definitions; determining wage of tipped employee.

A. As used in this article:

"Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to subsection H of § 40.1-28.10.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

"Employee" includes any individual employed by an employer. "Employee" includes a home care provider. "Employee" does not include the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

3. Caddies on golf courses;

4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

5. Any person under the age of 18 in the employ of his parent or legal guardian;

6. Any person confined in any penal or corrective institution of the Commonwealth or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

7. Any person employed by a summer camp for boys, girls, or both boys and girls;

8. Any person under the age of 16, regardless of by whom employed;

9. Any individual with disabilities employed by an employer that was authorized, prior to July 1, 2023, to employ individuals with disabilities at a subminimum wage pursuant to a special certificate issued

under 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended, provided that such individual was employed by and paid a subminimum wage by such employer pursuant to 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended, prior to July 1, 2023;

10. Students participating in a bona fide educational program;

11. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than 20 hours per week;

12. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

13. Any person who works as a babysitter for fewer than 10 hours per week;

14. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program governed by 22 C.F.R. § 62.31;

15. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and

16. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

"Employer" includes any individual, partnership, association, corporation, or business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.

"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than $30 each month from persons other than the employee's employer.

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used by the employee.

B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

1975, c. 530; 1976, c. 442; 1977, c. 432; 2007, cc. 816, 832; 2012, cc. 476, 507; 2014, c. 734; 2019, cc. 330, 331; 2020, cc. 1145, 1146, 1147, 1204, 1242; 2023, c. 782.

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"Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to subsection H of § 40.1-28.10.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

"Employee" includes any individual employed by an employer. "Employee" includes a home care provider. "Employee" does not include the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

3. Caddies on golf courses;

4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

5. Any person under the age of 18 in the employ of his parent or legal guardian;

6. Any person confined in any penal or corrective institution of the Commonwealth or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

7. Any person employed by a summer camp for boys, girls, or both boys and girls;

8. Any person under the age of 16, regardless of by whom employed;

9. Students participating in a bona fide educational program;

10. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than 20 hours per week;

11. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

12. Any person who works as a babysitter for fewer than 10 hours per week;

13. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program governed by 22 C.F.R. § 62.31;

14. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and

15. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

"Employer" includes any individual, partnership, association, corporation, or business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.

"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than $30 each month from persons other than the employee's employer.

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used by the employee.

B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser

amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

1975, c. 530; 1976, c. 442; 1977, c. 432; 2007, cc. 816, 832; 2012, cc. 476, 507; 2014, c. 734; 2019, cc. 330, 331; 2020, cc. 1145, 1146, 1147, 1204, 1242; 2023, c. 782.

### § 40.1-28.10. Minimum wages.

A. 1. Prior to May 1, 2021, every employer shall pay to each of its employees wages at a rate not less than the federal minimum wage.

2. Beginning May 1, 2021, every employer shall pay to each of his employees at a rate not less than the federal minimum wage or 75 percent of the Virginia minimum wage provided for in this section, whichever is greater. For the purposes of this subdivision "employee" means any person or individual who is enrolled in an established employer on-the-job or other training program for a period not to exceed 90 days which meets standards set by regulations adopted by the Commissioner.

B. From May 1, 2021, until January 1, 2022, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $9.50 per hour or (ii) the federal minimum wage.

C. From January 1, 2022, until January 1, 2023, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $11.00 per hour or (ii) the federal minimum wage.

D. From January 1, 2023, until January 1, 2025, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $12.00 per hour or (ii) the federal minimum wage.

E. (For effective date, see Acts 2020, cc. 1204 and 1242) From January 1, 2025, until January 1, 2026, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $13.50 per hour or (ii) the federal minimum wage.

F. (For effective date, see Acts 2020, cc. 1204 and 1242) From January 1, 2026, until January 1, 2027, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $15.00 per hour or (ii) the federal minimum wage.

G. From and after January 1, 2027, every employer shall pay to each of his employees wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage.

H. By October 1, 2026, and annually thereafter, the Commissioner shall establish the adjusted state hourly minimum wage that shall be in effect during the 12-month period commencing on the following January 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the amount of the state hourly minimum wage rate that is in effect on the date such adjustment is made and (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated by the U.S. Department of Labor, has increased during the most recent calendar year for which such information is available. The amount of each annual adjustment shall not be less than zero.

1975, c. 530; 1976, c. 736; 1978, c. 371; 1980, c. 532; 1991, cc. 547, 596; 1997, c. 544; 2020, cc. 1204, 1242.

### § 40.1-28.11. Penalties.

Whoever knowingly and intentionally violates any provisions of this article shall be punished by a fine of not less than $10 nor more than $200.

1975, c. 530.

### § 40.1-28.12. Employee's remedies.

Any employer who violates the minimum wage requirements of this law shall be liable to the employee or employees affected in the amount of the unpaid minimum wages, plus interest at eight per centum per annum upon such unpaid wages as may be due the plaintiff, said interest to be awarded from the date or dates said wages were due the employee or employees. The court may, in addition to any judgment awarded to the employee or employees, require defendant to pay reasonable attorney's fees incurred by the employee or employees.

1975, c. 530.

## Article 2 - Pay; Assignment of Wages; Sale of Merchandise to Employees

### § 40.1-29. Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties.

A. All employers operating a business or engaging an individual to perform domestic service shall establish regular pay periods and rates of pay for employees except executive personnel. All such employers shall pay salaried employees at least once each month and employees paid on an hourly rate at least once every two weeks or twice in each month, except that (i) a student who is currently enrolled in a work-study program or its equivalent administered by any secondary school, institution of higher education, or trade school, and (ii) employees whose weekly wages total more than 150 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500, upon agreement by each affected employee, may be paid once each month if the institution or employer so chooses. Upon termination of employment an employee shall be paid all wages or salaries due him for work performed prior thereto; such payment shall be made on or before the date on which he would have been paid for such work had his employment not been terminated.

B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable at face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in lawful money of the United States into an account in the name of the employee at a financial institution designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though such employee has not

affirmatively consented thereto, if the employee fails to designate an account at a financial institution in accordance with clause (iii) and the employer arranges for such card or card account to be issued through a network system through which the employee shall have the ability to make at least one free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card account as the employee may elect, using such card or card account at financial institutions participating in such network system.

C. No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee. On each regular pay date, each employer, other than an employer engaged in agricultural employment including agribusiness and forestry, shall provide to each employee a written statement, by a paystub or online accounting, that shows the name and address of the employer; the number of hours worked during the pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an exemption from the Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the employee during the pay period; and the amount and purpose of any deductions therefrom. The paystub or online accounting shall include sufficient information to enable the employee to determine how the gross and net pay were calculated. An employer engaged in agricultural employment including agribusiness and forestry, upon request of its employee, shall furnish the employee a written statement of the gross wages earned by the employee during any pay period and the amount and purpose of any deductions therefrom.

D. No employer shall require any employee, except executive personnel, to sign any contract or agreement which provides for the forfeiture of the employee's wages for time worked as a condition of employment or the continuance therein, except as otherwise provided by law.

E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section or § 40.1-29.3, unless the failure to pay was because of a bona fide dispute between the employer and its employee:

1. To an employee or employees is guilty of a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than $10,000; and

2. To an employee or employees is guilty of a Class 6 felony (i) if the value of the wages earned and not paid is $10,000 or more or (ii) regardless of the value of the wages earned and not paid, if the conviction is a second or subsequent conviction under this section or § 40.1-29.3.

For purposes of this section, the determination as to the "value of the wages earned" shall be made by combining all wages the employer failed or refused to pay pursuant to this section and § 40.1-29.3.

F. The Commissioner may require a written complaint of the violation of this section and, with the written and signed consent of an employee, may institute proceedings on behalf of an employee to enforce compliance with this section, and to collect any moneys unlawfully withheld from such

employee that shall be paid to the employee entitled thereto. In addition, following the issuance of a final order by the Commissioner or a court, the Commissioner may engage private counsel, approved by the Attorney General, to collect any moneys owed to the employee or the Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a judgment, against the employer, the Commissioner or the court shall assess attorney fees of one-third of the amount set forth in the final order or judgment.

G. In addition to being subject to any other penalty provided by the provisions of this section, any employer who fails to make payment of wages in accordance with subsection A shall be liable for the payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual rate of eight percent accruing from the date the wages were due.

H. Any employer who knowingly fails to make payment of wages in accordance with subsection A or § 40.1-29.3 shall be subject to a civil penalty not to exceed $1,000 for each violation. The Commissioner shall notify any employer that the Commissioner alleges has violated any provision of this section or § 40.1-29.3 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

I. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court as appropriate.

J. In addition to any civil or criminal penalty provided by this section, and without regard to any exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay wages to an employee in accordance with this section, the employee may bring an action, individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), against the employer in a court of competent jurisdiction to recover payment of the wages, and the court shall award the wages owed, an additional equal amount as liquidated damages, plus prejudgment interest thereon as provided in subsection G, and reasonable attorney fees and costs. If the court finds that the employer knowingly failed to pay wages to an employee in accordance with this section, the court shall award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.

K. As used in this section, a person acts "knowingly" if the person, with respect to information, (i) has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that a person acted knowingly shall not require proof of specific intent to defraud.

L. An action under this section shall be commenced within three years after the cause of action accrued. The period for filing is tolled upon the filing of an administrative action under subsection F until the employee has been informed that the action has been resolved or until the employee has withdrawn the complaint, whichever is sooner.

Code 1950, § 40-24; 1962, c. 66; 1966, c. 88; 1968, c. 262; 1970, c. 321; 1972, c. 848; 1977, c. 308; 1979, c. 50; 1989, c. 583; 1991, c. 499; 1993, c. 600; 2002, c. 321; 2003, c. 638; 2004, c. 358; 2005, cc. 595, 851; 2009, c. 728; 2016, c. 593; 2019, cc. 836, 845; 2020, cc. 202, 868, 1038; 2021, Sp. Sess. I, cc. 445, 513; 2022, cc. 461, 462.

**§ 40.1-29.1. Investigations of employers for nonpayment of wages.**

If in the course of an investigation of a complaint of an employer's failure or refusal to pay wages in accordance with the requirements of § 40.1-29, the Commissioner acquires information creating a reasonable belief that other employees of the same employer may not have been paid wages in accordance with such requirements, the Commissioner shall have the authority to investigate whether the employer has failed or refused to make any required payment of wages to other employees of the employer as required by § 40.1-29. If the Commissioner finds in the course of such investigation that the employer has violated a provision of § 40.1-29, the Commissioner may institute proceedings on behalf of any employee against his employer. Such proceedings shall be undertaken in accordance with the provisions of § 40.1-29, except that the Commissioner shall not require a written complaint of the violation or the written and signed consent of any employee as a condition of instituting such proceedings.

2020, cc. 205, 206; 2021, Sp. Sess. I, c. 445; 2022, cc. 461, 462.

**§ 40.1-29.2. Employer liability.**

Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the overtime pay provisions of such federal act or any related governing case law shall be liable to the employee for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in an action brought pursuant to the process in subsection J of § 40.1-29. For the purposes of this section, "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable limitations set forth in the federal Fair Labor Standards Act.

2021, Sp. Sess. I, c. 445; 2022, cc. 461, 462.

### § 40.1-29.3. Overtime for certain employees.

A. As used in this section:

"Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C. § 181 et seq.

"Derivative carrier" means a carrier that meets the two-part test used by the federal National Mediation Board to determine if a carrier is considered a derivative carrier.

"Employee" means an individual employed by a derivative carrier.

B. An employer shall pay each employee an overtime premium at a rate not less than one and one-half times the employee's regular rate for any hours worked by an employee in excess of 40 hours in any one workweek. An employee's regular rate shall be calculated as the employee's hourly rate of pay plus any other non-overtime wages paid or allocated for that workweek, excluding any amounts that would be excluded from the regular rate by the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and its implementing regulations for an individual covered by such federal act, divided by the total number of hours worked in that workweek.

C. If an employer fails to pay overtime wages to an employee in accordance with this section, the employee may bring an action against the employer in a court of competent jurisdiction to recover payment of the overtime wages, and the court shall award the overtime wages owed, an additional equal amount as liquidated damages, and reasonable attorney fees and costs; however, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of this section, the court may, in its discretion, award no liquidated damages or award any amount thereof not to exceed the amount of the unpaid overtime wages.

D. An action under this section shall be commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

2022, cc. 461, 462.

### § 40.1-30. Registration of certain nonresident employers with Department.

(a) Any employer domiciled without this Commonwealth and performing any demolition, excavation, installation, paving, repair, maintenance, erection or construction work within this Commonwealth for a fixed price, commission, fee or percentage, when the cost of the undertaking, order, contract or subcontract is not less than $300 nor more than $60,000, shall, prior to the commencement of each such undertaking or the performance of each such order, contract or subcontract, register with the Department, at Richmond, on such form as may be prescribed by said Department, providing thereon the employer's name and address, the name and address of the employer's chief officer or owner, the name and address of the person in charge of the work being done, the type of work to be done, the date work will commence, the specific location of the work, the name of the person, firm, corporation, partnership or association for whom the work is being performed, the cost of the undertaking or the

amount of the order, contract or subcontract and the approximate number of persons employed by the employer in said undertaking or performance, including the rates of pay and the number of persons employed at each rate and shall be submitted to the Department with a United States postal service money order or check drawn in favor of the State Treasurer in the amount of $100 for annual registration or $25 for registration for a specific job. Provided, however, nothing in this section shall apply to any such contractor who is registered under the provisions of Title 54.1, Chapter 11. Provided further, that any such employer may apply to the Department for annual registration which, if granted, shall relieve such employer from registration of each specific contract. Annual registration may be granted if the Department shall ascertain that such employer has a permanent and definite place of business outside this Commonwealth.

(b) Any employer failing to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $500. Each day's failure to register shall constitute a separate offense.

(c) This section shall be enforceable by the Commissioner and all officers empowered to enforce the criminal laws of this Commonwealth.

Code 1950, § 40-24.1; 1966, c. 614; 1968, c. 106; 1970, c. 321; 1972, c. 241; 1979, c. 484.

**§ 40.1-31. Assignment of wages and salaries; requirements.**

No assignment, transfer, pledge or hypothecation of wages or salary due or to become due to any person shall be valid and enforceable against any employer of the assignor, except with the express consent in writing of such employer given to the creditor or assignee, unless and until all of the following requirements have been fully met:

(1) Such assignment is printed in type not smaller than pica, is a separate instrument not incorporated in or made a part of any other contract or instrument, and is plainly designated "Wage Assignment."

(2) Such assignment is executed in triplicate and in person by the assignor, is dated on the date on which it is executed, one executed copy thereof is delivered to the assignor, and one executed copy is mailed to the employer therein named within fifteen days after the execution thereof; provided, however, that such copy mailed to the employer shall be for his information only, and shall not be construed as giving such employer legal notice of the assignee's intention to enforce the terms thereof or as constituting the notice referred to in § 8.01-13.

(3) The name of employer of the assignor is written therein before the signing thereof and the total amount, if any, which is to be secured thereby is plainly stated therein.

(4) The assignor is, at the time of the execution of the assignment, employed by the employer therein named.

(5) Ten days before any notice of the assignee's intention to enforce the terms of the assignment is served upon the employer, the assignee gives the assignor notice in writing sent by mail to his last known address that default has been made in his obligation.

(6) Notice of the assignee's intention to enforce the terms of an assignment has been served on the employer by an officer or other person authorized to serve civil process. Such notice shall be valid to make the assignment effective only from the time it is served.

(7) Whenever the assignor changes his employment after executing an assignment contemplated by this section then any assignee who has otherwise fully complied with the provisions of this section may enforce his assignment against the new employer of the assignor provided that he mails a copy of the assignment to the new employer within fifteen days after learning of such change of employment and gives the same notice or notices to the new employer as is required to be given to the original employer and complies with the conditions of subdivision (5) hereof.

Code 1950, § 40-30; 1970, c. 321.

### § 40.1-32. Partial assignments invalid.

No partial assignment of wages shall be enforceable at law or in equity; provided, however, that an assignment of all wages over and above the exemption provided in § 34-29 shall not be considered a partial assignment under the provisions of this section.

Code 1950, § 40-31; 1970, c. 321.

### § 40.1-33. Certain assignments not affected.

The two preceding sections (§§ 40.1-31, 40.1-32) shall not be construed to apply to assignments of salaries, wages and income for the benefit of creditors as provided for in Article 2 (§ 8.01-525.6 et seq.) of Chapter 18.1 of Title 8.01.

Code 1950, § 40-32; 1970, c. 321.

### § 40.1-33.1. Retaliatory actions prohibited; civil penalty.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee or independent contractor, or take other retaliatory action regarding an employee or independent contractor's compensation, terms, conditions, location, or privileges of employment, because the employee or independent contractor:

1. Has reported or plans to report to an appropriate authority that an employer, or any officer or agent of the employer, has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions; or

2. Is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

B. The provisions of subsection A shall apply only if an employee or independent contractor who discloses information about suspected worker misclassification has done so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be subject to the protections provided by subsection A.

C. Any employee who is discharged, disciplined, threatened, discriminated against, or penalized in a manner prohibited by this section may file a complaint with the Commissioner. The Commissioner, with the written and signed consent of such an employee, may institute proceedings against the employer for appropriate remedies for such action, including reinstatement of the employee and recovering lost wages.

D. Any employer who discharges, disciplines, threatens, discriminates against, or penalizes an employee in a manner prohibited by this section shall be subject to a civil penalty not to exceed the amount of the employee's wages that are lost as a result of the violation. Civil penalties under this section shall be assessed by the Commissioner and paid to the Literary Fund.

2020, cc. 204, 271.

### § 40.1-33.2. Discriminatory actions prohibited.

A. An employer shall not discharge or in any other manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under § 40.1-29, or has testified or is about to testify in any such proceeding.

B. Any employee who is discharged or in any other manner discriminated against in a manner prohibited by this section may file a complaint with the Commissioner, and the Commissioner, with the written and signed consent of an employee, may institute proceedings on behalf of an employee for appropriate remedies for such action, including reinstatement of the employee and recovering lost wages and an additional amount equal to the lost wages as liquidated damages.

2020, cc. 950, 951, § 40.1-33.1.

## Article 2.1 - Paid Sick Leave

### § 40.1-33.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Employee" means a home health worker who works on average at least 20 hours per week or 90 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month.

"Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency of the federal government.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

"Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

2021, Sp. Sess. I, c. 449.

**§ 40.1-33.4. Accrual of paid sick leave.**

A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer selects a higher limit.

B. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work 40 hours in each workweek for purposes of paid sick leave accrual unless their normal workweek is less than 40 hours, in which case paid sick leave accrues on the basis of that normal workweek.

C. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment. An employer may provide all paid sick leave that an employee is expected to accrue in a year at the beginning of the year.

D. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee an amount of paid leave sufficient to meet the requirements of this section and that may be used for the same purposes and under the same conditions as paid sick leave under this article shall not be

required to provide additional paid sick leave to any employee that is eligible for paid leave under the policy.

E. Any employer that has entered into a bona fide collective bargaining agreement that requires the employer to provide an amount of paid leave sufficient to meet the requirements of this section and that may be used for the same purposes and under the same conditions as paid sick leave under this article shall not be required to provide additional paid sick leave to any employee covered by such collective bargaining agreement.

2021, Sp. Sess. I, c. 449.

### § 40.1-33.5. Use of paid sick leave.

A. Paid sick leave shall be provided to an employee by an employer for:

1. An employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care; or

2. Care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care.

B. Paid sick leave shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means, or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide notice of the need for such leave to the employer in advance of the use of the paid sick leave and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the operations of the employer.

D. An employer that requires notice of the need to use paid sick leave shall provide a written policy that contains procedures for its employees to provide notice. An employer that has not provided to an employee a copy of its written policy for providing such notice shall not deny paid sick leave to the employee based on noncompliance with such a policy.

E. An employer shall not require, as a condition of an employee's taking paid sick leave, that an employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave. An employer shall not require an employee to work an alternate shift to make up for the use of sick leave.

F. For paid sick leave of three or more consecutive work days, an employer may require reasonable documentation that the paid sick leave has been used for a purpose for which such leave is required to be provided as set forth in subsection A.

2021, Sp. Sess. I, c. 449.

### § 40.1-33.6. Retaliatory action prohibited.

No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee (i) has requested or exercised the benefits provided for in this article or (ii) has alleged a violation of this article.

2021, Sp. Sess. I, c. 449.

## Article 2.2 - Organ Donation Leave

### § 40.1-33.7. Definitions.

As used in this article, unless the context requires a different meaning:

"Eligible employee" means an individual who has requested that an employer provide organ donation leave and who, as of the date that the requested organ donation leave begins, will have been employed by that employer for at least (i) a 12-month period and (ii) 1,250 hours during the previous 12 months.

"Employer" means any employer as defined in § 40.1-2 that employs 50 or more employees. Notwithstanding § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions. "Employer" does not include any agency of the federal government.

"Organ donation leave" means leave of an eligible employee for the purpose of donating one or more of such employee's human organs, including bone marrow, to be medically transplanted into the body of another individual.

2023, c. 751.

### § 40.1-33.8. Organ donation leave.

A. An employer shall provide an eligible employee (i) up to 60 business days of unpaid organ donation leave in any 12-month period to serve as an organ donor and (ii) up to 30 business days of unpaid organ donation leave in any 12-month period to serve as a bone marrow donor.

B. To receive organ donation leave, the eligible employee shall provide written physician verification to the employer that (i) the eligible employee is an organ donor or a bone marrow donor and (ii) there is a medical necessity for the donation of the organ or bone marrow.

C. No employee shall take organ donation leave concurrently with leave taken under the federal Family and Medical Leave Act (29 U.S.C. § 2601 et seq.).

D. Nothing in this article shall be construed to:

1. Discourage an employer from adopting or retaining leave policies more generous than required by this article;

2. Except as provided in subsection C, prohibit an employee from taking paid sick leave or other paid time off to which the employee is otherwise entitled in addition to or in lieu of organ donation leave; or

3. Diminish the obligation of an employer to comply with a collective bargaining agreement or an employment benefit program or plan that provides an amount of organ donation leave sufficient to meet the requirements of this article and that may be used for the same purposes and under the same conditions as organ donation leave under this article.

2023, c. 751.

### § 40.1-33.9. Employee's right to benefits; restoration of position.

A. No employer shall consider any period of time during which an eligible employee takes organ donation leave to be a break in the eligible employee's continuous service for the purpose of the eligible employee's right to salary adjustments, sick leave, vacation, paid time off, annual leave, seniority, or other employee benefits.

B. An eligible employee who returns to work after taking organ donation leave shall be entitled to restoration by the employer of (i) the position of employment held by the eligible employee when the organ donation leave began or (ii) an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. An employer may deny restoration of the eligible employee's position of employment under this subsection because of conditions unrelated to the exercise of rights established under this article.

2023, c. 751.

### § 40.1-33.10. Health benefit plan; commission.

A. During any period that an eligible employee takes organ donation leave, an employer shall maintain coverage of a health benefit plan for the duration of the organ donation leave and in the same manner that coverage would have been provided if the eligible employee had continued in employment continuously for the duration of the organ donation leave.

B. If an eligible employee works on a commission basis, an employer shall pay to the eligible employee during any period of organ donation leave any commission that becomes due because of work the eligible employee performed before taking organ donation leave.

2023, c. 751.

### § 40.1-33.11. Retaliatory action prohibited.

No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee (i) has requested or exercised the benefits provided for in this article or (ii) has alleged a violation of this article.

2023, c. 751.

### § 40.1-33.12. Enforcement; civil penalty.

A. The Commissioner shall enforce the provisions of this article and shall adopt appropriate guidance for the implementation and enforcement of this article.

B. Any person alleging a violation of this article shall have the right to file a complaint with the Commissioner within one year of the date the person knew or should have known of the alleged violation. The Commissioner shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or other person reporting the violation, provided, however, that with the authorization of such person, the Commissioner may disclose the person's name and identifying information as necessary to enforce this article or for other appropriate purposes.

C. Upon receiving a complaint alleging a violation of this article, the Commissioner shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Commissioner shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Commissioner believes that a violation has occurred, he shall issue to the offending person or employer a notice of violation and the relief required of the offending person or entity. The Commissioner shall prescribe the form and wording of such notices of violation, including any method of appealing a decision of the Commissioner.

D. The Commissioner shall notify any employer who he alleges has violated any provision of this article by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference with the Commissioner regarding such violation.

E. Any such employer who knowingly violates this article shall be subject to a civil penalty not to exceed $1,000 for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed $2,500 for the second violation and not to exceed $5,000 for each successive violation. In determining the amount of any civil penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final.

F. Civil penalties owed under this article shall be paid to the Commissioner for deposit into the general fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of civil penalties that are not contested by employers.

2023, c. 751.

## Article 3 - EMPLOYMENT OF WOMEN GENERALLY

### §§ 40.1-34 through 40.1-38. Repealed.

Repealed by Acts 1974, c. 272.

## Article 4 - SANITARY PROVISIONS

### § 40.1-39. Repealed.

Repealed by Acts 1979, c. 354.

### § 40.1-40. Repealed.

Repealed by Acts 1985, c. 449.

## Article 5 - SAFETY PROVISIONS

**§§ 40.1-41 through 40.1-43. Repealed.**
Repealed by Acts 1979, c. 354.

**§ 40.1-44. Repealed.**
Repealed by Acts 1973, c. 425.

**§ 40.1-44.1. Rules and regulations relating to tramways and other hauling and lifting devices.**
(a) The Safety and Health Codes Board in the adoption of rules and regulations under this title shall adopt such reasonable rules and regulations as are designed to protect the safety and health of the employees engaged in the construction, maintenance, repair and operation of tramways or any other hauling or lifting device used as a public or employee conveyance, and to protect the safety and health of the public or the employees when using such conveyance in, about, or in connection with recreational areas, excluding vehicular travel covered by ICC, SCC, motor vehicle codes and § 36-98.3.

(b) The rules and regulations adopted by the Safety and Health Codes Board pursuant to subsection (a) of this section shall be enforced as specified in §§ 40.1-49.3 through 40.1-49.7.

1972, c. 602; 1973, c. 425; 1979, c. 406.

**§§ 40.1-45 through 40.1-48. Repealed.**
Repealed by Acts 1979, c. 354.

**§ 40.1-49. Repealed.**
Repealed by Acts 1973, c. 425.

**§ 40.1-49.1. Repealed.**
Repealed by Acts 1976, c. 607.

**§ 40.1-49.2. Repealed.**
Repealed by Acts 1979, c. 354.

**§ 40.1-49.3. Definitions.**
For the purposes of §§ 40.1-49.4, 40.1-49.5, 40.1-49.6, 40.1-49.7, and 40.1-51.1 through 40.1-51.3 the following terms shall have the following meanings:

"Commission" means the Virginia Workers' Compensation Commission.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to Commissioner shall include his authorized representatives.

"Employee" means an individual who is employed by an employer.

"Employer" means any person that (i) is engaged in business or engages an individual to perform domestic service and (ii) has employees. "Employer" does not include the United States.

"Occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

"Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

"Circuit court" means the circuit court of the city or county wherein the violation of this title or any standard, rule or regulation issued pursuant thereto is alleged to have occurred. Venue shall be determined in accordance with the provisions of §§ 8.01-257 through 8.01-267.

1979, c. 354; 1992, c. 777; 2021, Sp. Sess. I, cc. 509, 513.

**§ 40.1-49.4. Enforcement of this title and standards, rules or regulations for safety and health; orders of Commissioner; proceedings in circuit court; injunctions; penalties.**

A. 1. If the Commissioner has reasonable cause to believe that an employer has violated any safety or health provision of Title 40.1 or any standard, rule or regulation adopted pursuant thereto, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provision of this title or the appropriate standards, rules or regulations adopted pursuant thereto, and shall include an order of abatement fixing a reasonable time for abatement of each violation.

2. The Commissioner may prescribe procedures for calling to the employer's attention de minimis violations which have no direct or immediate relationship to safety and health.

3. No citation may be issued under this section after the expiration of six months following the occurrence of any alleged violation.

4. (a) The Commissioner shall have the authority to propose civil penalties for cited violations in accordance with subsections G, H, I, and J. In determining the amount of any proposed penalty he shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. In addition, the Commissioner shall have authority to assess interest on all past-due penalties and administrative costs incurred in the collection of penalties for such violations consistent with § 2.2-4805.

(b) After, or concurrent with, the issuance of a citation and order of abatement, and within a reasonable time after the termination of an inspection or investigation, the Commissioner shall notify the employer by certified mail, by commercial delivery service with signed and dated acknowledgment of delivery,

or by personal service of the proposed penalty or that no penalty is being proposed. The proposed penalty shall be deemed to be the final order of the Commissioner and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Commissioner in writing that he intends to contest the citation, order of abatement or the proposed penalty or the employee or representative of employees has filed a notice in accordance with subsection B of this section and any such notice of proposed penalty, citation or order of abatement shall so state.

B. Any employee or representative of employees of an employer to whom a citation and order of abatement has been issued may, within 15 working days from the time of the receipt of the citation and order of abatement by the employer, notify the Commissioner, in writing, that they wish to contest the abatement time before the circuit court.

C. If the Commissioner has reasonable cause to believe that an employer has failed to abate a violation for which a citation has been issued within the time period permitted for its abatement, which time shall not begin to run until the entry of a final order in the case of any contest as provided in subsection E of this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, a citation for failure to abate will be issued to the employer in the same manner as prescribed by subsection A. In addition, the Commissioner shall notify the employer by certified mail, by commercial delivery service with signed and dated acknowledgment of delivery, or by personal service of such failure and of the penalty proposed to be assessed by reason of such failure. If, within 15 working days from the date of receipt of the notice of the proposed penalty, the employer fails to notify the Commissioner that he intends to contest the citation or proposed assessment of penalty, the citation and assessment as proposed shall be deemed a final order of the Commissioner and not subject to review by any court or agency.

D. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasurer of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties which are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

Final orders of the Commissioner or the circuit courts may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court as appropriate.

E. Upon receipt of a notice of contest of a citation, proposed penalty, order of abatement or abatement time pursuant to subdivision A 4 (b) or subsection B or C, the Commissioner shall immediately notify the attorney for the Commonwealth for the jurisdiction wherein the violation is alleged to have occurred and shall file a civil action with the circuit court. Upon issuance and service of process, the circuit court shall promptly set the matter for hearing without a jury. The circuit court shall thereafter

issue a written order, based on findings of fact and conclusions of law, affirming, modifying or vacating the Commissioner's citation or proposed penalty, or directing other appropriate relief, and such order shall become final 21 days after its issuance. The circuit court shall provide affected employees or their representatives and employers an opportunity to participate as parties to hearings under this subsection.

F. 1. In addition to the remedies set forth above, the Commissioner may file a civil action with the clerk of the circuit court having equity jurisdiction over the employer or the place of employment involved asking the court to temporarily or permanently enjoin any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this title. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. No order issued without prior notice to the employer shall be effective for more than five working days. Whenever and as soon as the Commissioner concludes that conditions or practices described in this subsection exist in any place of employment and that judicial relief shall be sought, he shall immediately inform the affected employer and employees of such proposed course of action.

2. Any court described in this section shall also have jurisdiction, upon petition of the Commissioner or his authorized representative, to enjoin any violations of this title or the standards, rules or regulations promulgated thereunder.

3. If the Commissioner arbitrarily or capriciously fails to seek relief under subdivision 1 of this subsection, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in a circuit court of competent jurisdiction for a writ of mandamus to compel the Commissioner to seek such an order and for such further relief as may be appropriate.

G. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto and such violation is specifically determined not to be of a serious nature may be assessed a civil penalty of up to $12,471, as such amount may be adjusted as provided in subsection P, for each such violation.

H. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto and such violation is determined to be a serious violation shall be assessed a civil penalty of up to $12,471, as such amount may be adjusted as provided in subsection P, for each such violation.

I. Any employer who fails to abate a violation for which a citation has been issued within the period permitted for its abatement (which period shall not begin to run until the entry of the final order of the circuit court) may be assessed a civil penalty of not more than $12,471, as such amount may be adjusted as provided in subsection P, for each day during which such violation continues.

J. Any employer who willfully or repeatedly violates any safety or health provision of this title or any standard, rule or regulation promulgated pursuant thereto may be assessed a civil penalty of not more than $124,709, as such amount may be adjusted as provided in subsection P, for each such violation.

K. Any employer who willfully violates any safety or health provisions of this title or standards, rules or regulations adopted pursuant thereto, and that violation causes death to any employee, shall, upon conviction, be punished by a fine of not more than $70,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than $140,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

L. In any proceeding before a judge of a circuit court parties may obtain discovery by the methods provided for in the Rules of Supreme Court of Virginia.

M. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section or § 40.1-49.5.

N. Every official act of the circuit court shall be entered of record and all hearings and records shall be open to the public, except any information subject to protection under the provisions of § 40.1-51.4:1.

O. The provisions of Chapter 30 (§ 59.1-406 et seq.) of Title 59.1 shall be considered safety and health standards of the Commonwealth and enforced as to employers pursuant to this section by the Commissioner of Labor and Industry.

P. Beginning in 2018, the Commissioner annually shall adjust the maximum civil penalties stated in subsections G through J each year by the percentage increase, if any, in the United States Average Consumer Price Index for all Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average for the previous calendar year. The amount of each adjustment to the maximum civil penalties shall be rounded to the nearest whole dollar. The adjustments to the maximum civil penalties shall be effective on each August 1. If the CPI-U is discontinued or revised, such other historical index or computation approved by the Commissioner shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI-U had not been discontinued or revised.

1979, c. 354; 1982, c. 412; 1989, c. 341; 1991, c. 153; 1992, c. 777; 2005, c. 681; 2017, cc. 221, 263; 2023, cc. 100, 101.

**§ 40.1-49.5. Appeals to Court of Appeals.**

Appeals shall lie from the order of the circuit court to the Court of Appeals in a manner provided by § 17.1-405 and the rules of the Supreme Court.

1979, c. 354; 1992, c. 777; 1993, c. 526.

### § 40.1-49.6. Same; attorneys for Commonwealth.

A. In any proceeding pursuant to the enforcement of the safety and health provisions of Title 40.1, the attorneys for the Commonwealth are hereby directed to appear and represent the Commonwealth before the circuit court in any civil or criminal matter involving any violation of such provisions in their respective jurisdictions.

B. The Office of the Attorney General shall provide one or more assistants who will be available to consult with and assist any attorney for the Commonwealth or his assistant in the preparation of any prosecution for violations of the occupational safety and health laws, standards, rules or regulations of the Commonwealth in order to establish uniform guidelines of prosecutorial and settlement policies and procedures in such cases.

1979, c. 354; 1992, c. 777.

### § 40.1-49.7. Same; publication of orders.

The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the circuit courts. Every attorney for the Commonwealth's office shall receive at least one copy of each such order.

1979, c. 354; 1992, c. 777.

### § 40.1-49.8. Inspections of workplace.

In order to carry out the purposes of the occupational safety and health laws of the Commonwealth and any such rules, regulations, or standards adopted in pursuance of such laws, the Commissioner, upon representing appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge of such workplace as described in subdivision 1, or with an appropriate order or warrant:

1. To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed, including any place where an individual is engaged to perform domestic service, by an employee of an employer; and

2. To inspect, investigate, and take samples during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

1979, c. 533; 1987, c. 643; 2021, Sp. Sess. I, cc. 509, 513.

### § 40.1-49.9. Issuance of warrant.

Administrative search warrants for inspections of workplaces, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued by any judge having authority to issue

criminal warrants whose territorial jurisdiction encompasses the workplace to be inspected or entered, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the issuance of an administrative search warrant. No administrative search warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either (i) reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, thing, or person, or (ii) there is cause to believe that there is a condition, object, activity, or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the occupational safety and health laws, regulations or standards of the Commonwealth which authorize such inspection, testing or collection of samples for testing. In the case of an administrative search warrant based on legislative or administrative standards for selecting workplaces for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge that the inspection program is based on reasonable standards and that the standards are being applied to a particular workplace in a neutral and fair manner. For example, if a selection is based on a particular industry's high hazard ranking, the affidavit shall disclose the method used to establish that ranking, the numerical basis for that ranking, and the relevant inspection history of the workplace to be inspected and the status of all other workplaces within the same territorial region which are subject to inspection pursuant to the legislative or administrative standards used by the Commissioner. The affidavit shall not be required to disclose the actual schedule for inspections or the underlying data on which the statistics were based, provided that such statistics are derived from reliable, neutral third parties. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54.

1987, c. 643; 2014, c. 354.

### § 40.1-49.10. Duration of warrant.

Any administrative search warrant issued shall be effective for the time specified therein, but not for a period of more than fifteen days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The warrant shall be executed and shall be returned to the clerk of the circuit court of the city or county wherein the inspection was made within the time specified in the warrant or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

1987, c. 643; 2014, c. 354.

### § 40.1-49.11. Conduct of inspection, testing, or collection of samples for analysis.

No warrant shall be executed in the absence of the owner, operator or agent in charge of the particular place, things or persons unless specifically authorized by the issuing judicial officer upon showing that such authority is reasonably necessary to effect the purposes of a law or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to an employee's health or safety, or (ii) where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer who shall accompany the Commissioner's representative during the execution.

1987, c. 643.

### § 40.1-49.12. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return, except as a defense in a contempt proceeding, unless the owner or custodian of the place to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera review as the court may deem appropriate.

B. After the warrant has been executed and returned, the validity of the warrant may be reviewed either as a defense to any citation issued by the Commissioner or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the employer whose workplace has been inspected makes by affidavit a substantial showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The reviewing court shall not conduct a de novo determination of probable cause, but only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

1987, c. 643; 2014, c. 354.

### § 40.1-49.13. Voluntary Protection Program.

A. As used in this section:

"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP standards adopted by the Safety and Health Codes Board pursuant to subsection B.

"Voluntary Protection Program" or "VPP" means a program under which the Commissioner recognizes and partners with workplaces in which a model system has been implemented.

B. The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;

2. Systematic assessment of occupational hazards;

3. Comprehensive hazard prevention, mitigation, and control programs;

4. Employee safety and health training; and

5. Safety and health program evaluation.

C. Applications for participation in the VPP shall be submitted by the workplace's management. Applications shall include documentation establishing to the satisfaction of the Commissioner that the employer meets all standards for VPP participation.

D. The Department shall provide for onsite evaluations by VPP evaluation teams of each workplace that has applied to participate in the VPP to determine that the applicant's workplace complies with the standards for VPP participation.

E. A workplace's continued participation in the VPP shall be conditioned on compliance with the standards for VPP participation, as determined by periodic onsite evaluations by VPP evaluation teams.

F. During periods in which a workplace is a participant in the VPP, the workplace shall be exempt from inspections or investigations under § 40.1-49.4; however, this exception shall not apply to inspections or investigations of the workplace arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases.

2015, cc. 20, 339.

**§ 40.1-50. Repealed.**

Repealed by Acts 1985, c. 449.

**§ 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations.**

A. The State Health Commissioner shall be responsible for advising and providing technical aid to the Commissioner on matters pertaining to occupational health on request.

B. The Department of Labor and Industry shall be responsible for drafting and submitting to the Virginia Safety and Health Codes Board for adoption rules and regulations pertaining to control measures to protect the health of workers. In formulating rules and regulations pertaining to health, the Department of Labor and Industry shall request the advice and technical aid of the Department of Health.

Code 1950, § 40-62.2; 1950, p. 636; 1970, c. 321; 1972, c. 567; 1985, c. 449; 2003, c. 445.

**§ 40.1-51.1. Duties of employers.**

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

B. Every employer shall provide to employees, by such suitable means as shall be prescribed in rules and regulations of the Safety and Health Codes Board, information regarding their exposure to toxic materials or harmful physical agents and prompt information when they are exposed to concentration or levels of toxic materials or harmful physical agents in excess of those prescribed by the applicable safety and health standards and shall provide employees or their representatives with the opportunity to observe monitoring or measuring of exposures. Every employer shall also inform any employee who is being exposed of the corrective action being taken and shall provide former employees with access to information about their exposure to toxic materials or harmful physical agents.

C. Every employer cited for a violation of any safety and health provisions of this title or standards, rules, and regulations promulgated thereunder shall post a copy of such citation at the site of the violations so noted as prescribed in the rules and regulations of the Safety and Health Codes Board.

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in a fatality or within 24 hours any work-related incident resulting in (i) the inpatient hospitalization of one or more persons, (ii) an amputation, or (iii) the loss of an eye, as prescribed in the rules and regulations of the Safety and Health Codes Board.

E. Every employer, through posting of notices or other appropriate means, shall keep his employees informed of their rights and responsibilities under this title and of specific safety and health standards applicable to his business establishment.

F. An employer representative shall be given the opportunity to accompany the safety and health inspectors on safety or health inspections.

G. Nothing in this section shall be construed to limit the authority of the Commissioner pursuant to § 40.1-6 or the Board pursuant to § 40.1-22 to promulgate necessary rules and regulations to protect and promote the safety and health of employees.

1972, c. 602; 1973, c. 425; 1976, c. 607; 1979, c. 354; 1995, c. 373; 2015, c. 270; 2016, c. 336.

### § 40.1-51.1:1. Repealed.

Repealed by Acts 1979, c. 354.

### § 40.1-51.2. Rights and duties of employees.

(a) It shall be the duty of each employee to comply with all occupational safety and health rules and regulations issued pursuant to this chapter and any orders issued thereunder which are applicable to his own action and conduct.

(b) Employees or their representatives may bring to the attention of their employer any hazardous conditions that exist or bring the matter to the attention of the Commissioner or his authorized

representative, without first bringing the matter to the attention of their employer. Upon receipt of any complaint of hazardous conditions, the Commissioner or his authorized representative shall cause an inspection to be made as soon as practicable. Within two working days after making the oral complaint the employee or the employee representative shall file a written complaint with the Commissioner on a form prescribed by the Commissioner, if at that time, the Commissioner or his authorized representative has not caused the hazardous condition to be corrected. A copy of such written complaint shall be made available to the employer by the Commissioner at the time of such inspection. The name or names of individuals bringing such matters to the attention of the Commissioner shall be held in confidence upon request of such individuals.

(c) [Repealed.]

(d) A representative of the employees selected by the employees shall be given an opportunity to accompany the Commissioner or his authorized representative during the physical inspection of the work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety at the work place. No person shall discharge or in any manner discriminate against an employee representative for his participation in any safety and health inspection.

(e) The employer and the complaining employee, employees or employee representative shall be notified in writing by the Commissioner or his authorized representative of any decision concerning a complaint, of the reasons for such decision and of the rights of the parties to redress pursuant to § 40.1-49.4 of the Code.

1972, c. 602; 1973, c. 425; 1976, c. 607.

**§ 40.1-51.2:1. Discrimination against employee for exercising rights prohibited.**

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.

1979, c. 354.

**§ 40.1-51.2:2. Remedy for discrimination.**

A. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of § 40.1-51.2:1 may, within 60 days after such violation occurs, file a complaint with the Commissioner alleging such discharge or discrimination. The employee shall be prohibited from seeking relief under this section if he fails to file such complaint within the 60-day time period. Upon receipt of such complaint, the Commissioner shall cause such investigation to be made as he deems appropriate. If, upon such investigation, he determines that the provisions of § 40.1-51.2:1 have been violated, he shall attempt by conciliation to have the violation abated without economic loss to the employee. In the event a voluntary agreement cannot be obtained, the Commissioner shall bring an action in a circuit court having jurisdiction over the person charged with the

violation. The court shall have jurisdiction, for cause shown, to restrain violations and order appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay plus interest at a rate not to exceed eight percent per annum.

B. Should the Commissioner, based on the results of his investigation of the complaint, refuse to issue a charge against the person that allegedly discriminated against the employee, the employee may bring action in a circuit court having jurisdiction over the person allegedly discriminating against the employee, for appropriate relief.

1979, c. 354; 2001, c. 332; 2005, cc. 743, 789.

### § 40.1-51.3. Duties of health and safety inspectors.

(a) It shall be the duty of all safety and health inspectors to inspect all places of business covered by the State Plan developed in accordance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) for conformity with the provisions of this title and with all safety and health standards, rules and regulations promulgated under this title.

(b) [Repealed.]

1972, c. 602; 1979, c. 354.

### § 40.1-51.3:1. Penalty for giving advance notice of safety or health inspection under this title.

Any person who gives advance notice of any safety or health inspection to be conducted under the provisions of this title without authority of the Commissioner or his authorized representative shall be 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 more than six months, or by both such fine and imprisonment.

1973, c. 425; 1994, c. 28.

### § 40.1-51.3:2. Evidence of civil penalty against employer under state, federal, etc., safety codes inadmissible in personal injury or property damage trial.

In the trial of any action to recover for personal injury or property damage sustained by any party, in which action it is alleged that an employer acted in violation of or failed to act in accordance with any provision of this chapter or any state or federal occupational safety, health and safety standards act, the fact of the issuance of a citation, the voluntary payment of a civil penalty by a party charged with a violation, or the judicial assessment of a civil penalty under this chapter or any such state or federal occupational safety, health and safety standards act, shall not be admissible in evidence.

1974, c. 516.

### § 40.1-51.4. Repealed.

Repealed by Acts 1979, c. 354.

### § 40.1-51.4:1. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Commissioner or his authorized representative in connection with any inspection or proceeding under this title which contains or which

might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Commissioner or his authorized representatives concerned with carrying out any provisions of this title or any proceeding under the aforementioned title. In any such proceeding, the court, the Safety and Health Codes Board or the Commissioner shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

1976, c. 607; 1994, c. 28.

### § 40.1-51.4:2. Penalty for making false statements, etc.

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under this title shall upon conviction be punished by a fine of not more than $10,000, or by imprisonment for not more than six months or by both.

1976, c. 607; 1994, c. 28.

### § 40.1-51.4:3. Prohibition of use of certain questions on polygraph tests for employment.

No employer shall, as a condition of employment, require a prospective employee to answer questions in a polygraph test concerning the prospective employee's sexual activities unless such sexual activity of the prospective employee has resulted in a conviction of a violation of the criminal laws of this Commonwealth. Any written record of the results of a polygraph examination given to a prospective employee by an employer shall be destroyed or maintained on a confidential basis by the employer giving the examination and shall be open to inspection only upon agreement of the employee tested.

Violation of this section shall constitute a Class 1 misdemeanor.

1977, c. 521; 1990, c. 368.

### § 40.1-51.4:4. Prohibition of use of polygraphs in certain employment situations.

A. As used in this section, the term "lie detector test" means any test utilizing a polygraph or any other device, mechanism or instrument which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.

B. Notwithstanding the provisions of § 40.1-2.1, it shall be unlawful for any law-enforcement agency as defined in § 9.1-500 or regional jail to require any employee to submit to a lie detector test, or to discharge, demote or otherwise discriminate against any employee for refusal or failure to take a lie detector test, except that the chief executive officer of a law-enforcement agency or the superintendent of a regional jail may, by written directive, require an employee to submit to a lie detector test related to a particular internal administrative investigation concerning allegations of misconduct or criminal activity. No employee required to submit to a lie detector test shall be discharged, demoted or otherwise discriminated against solely on the basis of the results of the lie detector test.

C. Any person who believes that he has been discharged, demoted or otherwise discriminated against by any person in violation of this section may, within 90 days after such alleged violation occurs, file a complaint with the Commissioner. Upon a finding by the Commissioner of a violation of this section, the Commissioner shall order, in the event of discharge or demotion, reinstatement of such person to his former position with back pay plus interest at a rate not to exceed eight percent per annum. Such orders of the Commissioner which have become final under the Virginia Administrative Process Act (§ 2.2-4000 et seq.) may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. The Commissioner, or his authorized representative, shall have the right to petition circuit court for injunctive or such other relief as may be necessary for enforcement of this section. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section.

D. The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be submitted, referenced, referred to, offered or presented in any manner in any proceeding conducted pursuant to § 2.2-1202.1 or conducted by any county, city or town except as to disciplinary or other actions taken against a polygrapher.

1994, c. 561; 1998, c. 140; 2000, cc. 585, 591; 2012, cc. 803, 835.

**§ 40.1-51.4:5. Immunity of employees for reporting threatening conduct.**

A. Any employee who, in good faith with reasonable cause and without malice, truthfully reports threatening conduct by a person employed at the same workplace shall be immune from all civil liability that might otherwise be incurred or imposed as the result of making such a report.

B. As used in subsection A, "threatening conduct" means any conduct that would place a person in reasonable apprehension of death or bodily injury.

C. The immunity provided by this section shall not abrogate any other immunity that an employee may be entitled to assert.

2002, c. 537.

## Chapter 3.1 - BOILER AND PRESSURE VESSEL SAFETY ACT

## Article 1 - IN GENERAL

**§ 40.1-51.5. Short title; definitions.**

As used in this chapter, which may be cited as the Boiler and Pressure Vessel Safety Act, the following terms shall have the meanings set forth in this section unless the context requires a different meaning:

(a) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term "boiler"

shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

1. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen pounds per square inch gauge pressure.

2. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding 160 pounds per square inch gauge pressure or temperatures exceeding 250 degrees Fahrenheit.

3. "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 pounds per square inch gauge pressure, or a hot water boiler operating at pressures not exceeding 160 pounds per square inch gauge pressure or temperature not exceeding 250 degrees Fahrenheit.
(b) "Unfired pressure vessel"
means a vessel in which the pressure is obtained from an external source or by the application of heat from an indirect source or from a direct source, other than those vessels defined in subdivision (a) of this section.

(c) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector to decide whether or not a certificate as provided by § 40.1-51.10 may be issued. This certificate inspection shall be an internal inspection when construction permits; otherwise, it shall be as complete an inspection as possible.

(d) "Board" means the Safety and Health Codes Board.

(e) "Owner-user inspection agency" means any person, firm, partnership or corporation registered with the Chief Inspector and approved by the Board as being legally responsible for inspecting pressure vessels which they operate in Virginia.

(f) "Examining Board" means persons appointed by the Chief Inspector to monitor examinations of inspectors.

(g) "Water heater" means a vessel used to supply (i) potable hot water or (ii) both space heat and potable water in combination which is directly heated by the combustion of fuels, by electricity or any other source and withdrawn for use external to the system at pressures not to exceed 160 pounds per square inch, or temperatures of 210 degrees Fahrenheit.

(h) "Contract fee inspector" means any certified boiler inspector contracted to inspect boilers or pressure vessels on an independent basis by the owner or operator of the boiler or pressure vessel.

1972, c. 237; 1974, c. 195; 1986, c. 211; 1993, c. 543; 1996, c. 294.

### § 40.1-51.6. Safety and Health Codes Board to formulate rules, regulations, etc.; cost of administration.

A. The Board is authorized to formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth.

In promulgating such rules, regulations and standards, the Board shall consider any or all of the following:

1. Standards, formulae and practices generally accepted by recognized engineering and safety authorities and bodies.

2. Previous experiences based upon inspections, performance, maintenance and operation.

3. Location of the boiler or pressure vessel relative to persons.

4. Provisions for operational controls and safety devices.

5. Interrelation between other operations outside the scope of this chapter and those covered by this chapter.

6. Level of competency required of persons installing, constructing, maintaining or operating any equipment covered under this chapter or auxiliary equipment.

7. Federal laws, rules, regulations and standards.

B. The Commissioner shall ensure that the costs of administering this chapter shall not exceed revenues generated from fees collected pursuant to the provisions of this chapter.

1972, c. 237; 1973, c. 425; 1985, c. 40.

### § 40.1-51.7. Installations, repairs and alterations to conform to rules and regulations; existing installations.

(a) No boiler or pressure vessel which does not conform to the rules and regulations of the Board governing new construction and installation and which has been certified by the Board shall be installed or operated in this Commonwealth after twelve months from July 1, 1973. Prior to such date no boiler or pressure vessel shall be installed and operated unless it is in conformity with the rules and regulations established pursuant to this chapter which were in existence on July 1, 1972.

(b) This chapter shall not be construed as in any way preventing the use, sale or reinstallation of a boiler or pressure vessel constructed prior to July 1, 1972, provided it has been made to conform to the rules and regulations of the Board governing existing installations prior to its reinstallation or operation.

(c) Repairs and alterations shall conform to the rules and regulations set forth by the Board.

1972, c. 237; 1974, c. 195; 1986, c. 211.

### § 40.1-51.8. Exemptions.

The provisions of this article shall not apply to any of the following:

1. Boilers or unfired pressure vessels owned or operated by the federal government or any agency thereof;

2. Boilers or fired or unfired pressure vessels used in or on the property of private residences or apartment houses of less than four apartments;

3. Boilers of railroad companies maintained on railborne vehicles or those used to propel waterborne vessels;

4. Hobby or model boilers as defined in § 40.1-51.19:1;

5. Hot water supply boilers, water heaters, and unfired pressure vessels used as hot water supply storage tanks heated by steam or any other indirect means when the following limitations are not exceeded:

a. A heat input of 200,000 British thermal units per hour;

b. A water temperature of 210° Fahrenheit;

c. A water-containing capacity of 120 gallons;

6. Unfired pressure vessels containing air only which are located on vehicles or vessels designed and used primarily for transporting passengers or freight;

7. Unfired pressure vessels containing air only, installed on the right-of-way of railroads and used directly in the operation of trains;

8. Unfired pressure vessels used for containing water under pressure when either of the following are not exceeded:

a. A design pressure of 300 psi; or

b. A design temperature of 210° Fahrenheit;

9. Unfired pressure vessels containing water in combination with air pressure, the compression of which serves only as a cushion, that do not exceed:

a. A design pressure of 300 psi;

b. A design temperature of 210° Fahrenheit; or

c. A water-containing capacity of 120 gallons;

10. Unfired pressure vessels containing air only, providing the volume does not exceed eight cubic feet nor the operating pressure is not greater than 175 pounds;

11. Unfired pressure vessels having an operating pressure not exceeding fifteen pounds with no limitation on size;

12. Pressure vessels that do not exceed:

a. Five cubic feet in volume and 250 pounds per square inch gauge pressure;

b. One and one-half cubic feet in volume and 600 pounds per square inch gauge pressure; and

c. An inside diameter of six inches with no limitations on gauge pressure;

13. Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when

charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation;

14. Stationary American Society of Mechanical Engineers (ASME) LP-Gas containers used exclusively in propane service with a capacity that does not exceed 2,000 gallons if the owner of the container or the owner's servicing agent:

a. Conducts an inspection of the container not less frequently than every five years, in which all visible parts of the container, including insulation or coating, structural attachments, and vessel connections, are inspected for corrosion, distortion, cracking, evidence of leakage, fire damage, or other condition indicating impairment;

b. Maintains a record of the most recent inspection of the container conducted in accordance with subdivision a; and

c. Makes the records required to be maintained in accordance with subdivision b available for inspection by the Commissioner;

15. Unfired pressure vessels used in and as a part of electric substations owned or operated by an electric utility, provided such electric substation is enclosed, locked, and inaccessible to the public; or

16. Coil type hot water boilers without any steam space where water flashes into steam when released through a manually operated nozzle, unless steam is generated within the coil or unless one of the following limitations is exceeded:

a. Three-fourths inch diameter tubing or pipe size with no drums or headers attached;

b. Nominal water containing capacity not exceeding six gallons; and

c. Water temperature not exceeding 350° Fahrenheit.

1972, c. 237; 1977, c. 301; 1978, c. 355; 1986, c. 211; 1988, c. 289; 1990, c. 226; 1993, c. 543; 1999, c. 335; 2000, c. 898; 2012, c. 332; 2013, c. 171.

**§ 40.1-51.9. Employment and appointment of inspectors and other personnel; inspections; reports.** The Commissioner is authorized to employ persons to enforce the provisions of this chapter and the regulations of the Board. He shall be authorized to require examinations or other information which he deems necessary to aid him in determining the fitness, competency, and professional or technical expertise of any applicant to perform the duties and tasks to be assigned.

The Commissioner is authorized to appoint a Chief Inspector and to certify special inspectors who shall meet all qualifications set forth by the Commissioner and the Board. Special inspectors shall be authorized to inspect specified premises and without cost or expense to the Commonwealth. Reports of all violations of the regulations or of this chapter shall be immediately made to the Commissioner. Other reports shall be made as required by the Commissioner.

1972, c. 237; 1974, c. 195; 1995, c. 97.

**§ 40.1-51.9:1. Examination of inspectors; certificate of competency required.**

A. All applicants for the position of inspector authorized by § 40.1-51.9 shall be required to have successfully completed an examination monitored by the Examining Board and to have received a certificate of competency from the Commissioner prior to commencing their duties. A fee as set under subsection A of § 40.1-51.15 shall be charged each applicant taking the inspector's examination.

B. Each inspector holding a valid certificate of competency and who conducts inspections, as provided by this chapter, shall be required to obtain an identification card biennially, not later than June 30 of the year in which the identification card is required. Application for the identification card shall be made on forms furnished by the Department upon request. Each application shall be submitted to the Department, accompanied by a post-office money order or check drawn to the order of the Treasurer of Virginia in the amount as set under subsection A of § 40.1-51.15.

1974, c. 195; 1986, c. 266; 1997, c. 212.

**§ 40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.**

A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.

C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.

D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.

E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or

misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel possessed evidence of financial responsibility accepted by the Chief Inspector or the Board.

1996, c. 294.

**§ 40.1-51.10. Right of access to premises; certification and recertification; inspection requirements.**

A. The Commissioner, his agents or special inspectors shall have free access, during reasonable hours to any premises in the Commonwealth where a boiler or pressure vessel is being constructed, operated or maintained, or is being installed to conduct a variance review, an owner-user inspection agency audit, an emergency repair review, an accident investigation, a violation follow-up, and a secondhand or used boiler review for the purpose of ascertaining whether such boiler or pressure vessel is being constructed, operated or maintained in accordance with this chapter.

B. On and after January 1, 1973, no boiler or pressure vessel used or proposed to be used within this Commonwealth, except boilers or pressure vessels exempted by this chapter, shall be installed, operated or maintained unless it has been inspected by the Commissioner, his agents or special inspectors as to construction, installation and condition and shall be certified. A fee as set under subsection A of § 40.1-51.15 shall be charged for each inspection certificate issued. In lieu of such fees both for certification and recertification, an authorized owner-user inspection agency shall be charged annual filing fees as set under subsection A of § 40.1-51.15.

C. Recertification shall be required as follows:

1. Power boilers and high pressure, high temperature water boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible;

2. Heating boilers shall receive a certificate inspection biennially;

3. Pressure vessels subject to internal corrosion shall receive a certificate inspection biennially;

4. Pressure vessels not subject to internal corrosion shall receive a certificate inspection at intervals set by the Board, but internal inspection shall not be required of pressure vessels, the content of which are known to be noncorrosive to the material of which the shell, heads or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the Board;

5. Nuclear vessels within the scope of this chapter shall be inspected and reported in such form and with such appropriate information as the Board shall designate;

6. A grace period of two months beyond the periods specified in subdivisions 1, 2, 3 and 4 of this subsection may elapse between certificate inspections. The Chief Inspector may extend a certificate for up to three additional months beyond such grace period subject to a satisfactory external inspection of the object and receipt of a fee as set under subsection A of § 40.1-51.15 for each month of inspection beyond the grace period.

D. Inspection requirements for operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions and shall include but not be limited to the following criteria:

1. Previous experience, based on records of inspection, performance and maintenance;

2. Location, with respect to personnel hazard;

3. Qualifications and competency of inspection and operating personnel;

4. Provision for related safe operation controls; and

5. Interrelation with other operations outside of the scope of this chapter.

E. Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Board may, in its discretion, permit variations in the inspection requirements as provided in this section.

F. If, at the discretion of the Commissioner, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user of the boiler or pressure vessel.

G. All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this Commonwealth after the six-month period from the date upon which the rules and regulations of the Board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the Board.

H. Ninety-one days after expiration of a certificate for any boiler or pressure vessel subject to this section, the Commissioner may assign an agent or special inspector to inspect such boiler or pressure vessel, and its owner or operator shall be assessed a fee for such inspection. The fee shall be established in accordance with subsection A of § 40.1-51.15.

1972, c. 237; 1974, c. 195; 1976, c. 288; 1986, c. 266; 1988, c. 289; 1992, c. 3; 1993, c. 544; 1995, c. 97; 1997, c. 212; 2005, c. 387.

### § 40.1-51.10:1. Issuance of certificates; charges.

The Commissioner may designate special inspectors and contract fee inspectors to issue inspection certificates for boilers and pressure vessels they have inspected. If no defects are found or when the boiler or pressure vessel has been corrected in accordance with regulations, the designated special inspector or contract fee inspector shall issue a certificate on forms furnished by the Department. The designated special inspector or contract fee inspector shall collect the inspection certificate fee

required under § 40.1-51.10 at the time of the issuance of the certificate and forward the fee and a duplicate of the certificate to the chief inspector immediately.

Each designated special inspector or contract fee inspector may charge a fee as set under subsection A of § 40.1-51.15 for each certificate issued, but the charge shall not be mandatory. No charge shall be made unless the inspector has previously contracted therefor.

1997, c. 212.

### § 40.1-51.11. Suspension of inspection certificate; injunctive relief.

A. The Commissioner or his authorized representative may at any time suspend an inspection certificate when, in his opinion, the boiler or pressure vessel for which it was issued, cannot be operated without menace to the public safety, or when the boiler or pressure vessel is found not to comply with the rules and regulations herein provided. Each suspension of an inspection certificate shall continue in effect until such boiler or pressure vessel shall have been made to conform to the rules and regulations of the Board, and until such inspection certificate shall have been reinstated. No boiler or pressure vessel shall be operated during the period of suspension.

B. Notwithstanding any other provision of this chapter to the contrary, in the event of violation of any provision of this chapter or the regulations promulgated thereunder, the Board or the Commissioner may petition any appropriate court of record for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.

1972, c. 237; 1981, c. 39; 2000, c. 728.

### § 40.1-51.11:1. Owner-user inspection agencies.

Any person, firm, partnership or corporation operating pressure vessels in this Commonwealth may seek approval and registration as an owner-user inspection agency by filing an application with the chief inspector on forms prescribed and available from the Department, and request approval by the Board. Each application shall be accompanied by a fee as set under subsection A of § 40.1-51.15 and a bond in the penal sum of $5,000 which shall continue to be valid during the time the approval and registration of the company as an owner-user inspection agency is in effect. Applicants meeting the requirements of the rules and regulations for approval as owner-user inspection agencies will be approved and registered by the Board. The Board shall withdraw the approval and registration as an owner-user inspection agency of any person, firm, partnership or corporation which fails to comply with all rules and regulations applicable to owner-user inspection agencies. Each owner-user inspection agency shall file an annual statement as required by the rules and regulations, accompanied by a filing fee as set under subsection A of § 40.1-51.15.

1974, c. 195; 1986, c. 266; 1997, c. 212.

### § 40.1-51.12. Violation for operating boiler or pressure vessel without inspection certificate; civil penalty.

A. After twelve months following July 1, 1972, it shall be unlawful for any person, firm, partnership or corporation to operate in this Commonwealth a boiler or pressure vessel without a valid inspection

certificate. Any owner, user, operator or agent of any such person who actually operates or is responsible for operating such boiler or pressure vessel thereof who operates a boiler or pressure vessel without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate shall be in violation of this section and subject to a civil penalty not to exceed $100. Each day of such violation shall be deemed a separate offense.

B. All procedural rights guaranteed to employers pursuant to § 40.1-49.4 shall apply to penalties under this section.

C. Investigation and enforcement for violations of this section shall be carried out by the Department of Labor and Industry. Civil penalties imposed for violations of this section shall be paid into the general fund.

1972, c. 237; 1995, c. 97.

### § 40.1-51.13. Posting of certificate.

Certificates shall be posted in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within the building the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected, or in any place where it will be accessible to interested parties.

1972, c. 237; 1990, c. 226.

### § 40.1-51.14. When inspection certificate for insured boiler or pressure vessel invalid.

No inspection certificate issued for an insured boiler or pressure vessel based upon a report of a special inspector shall be valid after the boiler or pressure vessel for which it was issued shall cease to be insured by a company duly authorized to issue policies of insurance in this Commonwealth.

1972, c. 237.

### § 40.1-51.15. Fees.

A. The Safety and Health Codes Board shall establish fees required under this chapter. Following the close of any biennium, when the account for the Safety and Health Codes Board shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses. Such revisions, and the underlying rationale, shall be included in the Department's Annual Report submitted pursuant to § 40.1-4.1.

B. The owner or user of a boiler or pressure vessel required by this chapter to be reviewed shall pay directly to the Commissioner, upon completion of inspection, fees in accordance with the following schedule:

1. Conducting or participating in reviews and surveys of boiler or pressure vessel manufacturers or repair organizations for the purpose of national accreditation, shall be charged a fee as set under subsection A per review or survey.

2. a. All other inspections, including variance reviews, emergency repair reviews, and reviews of secondhand or used boilers or pressure vessels made by the Commissioner or his appointed representative shall be charged a fee as set under subsection A.

b. "Secondhand" shall mean an object which has changed ownership and location after primary use.

C. The Commissioner shall transfer all fees so received to the State Treasurer for deposit into the general fund of the state treasury.

1972, c. 237; 1985, c. 40; 1986, c. 266; 1988, c. 289; 1993, c. 544; 1995, c. 97; 1997, c. 212.

### § 40.1-51.15:1. Only one inspection necessary.

Inspection under the provisions of this chapter shall constitute compliance with and shall be in lieu of any boiler or pressure vessel inspection required by Chapter 6 (§ 36-97 et seq.) of Title 36.

1980, c. 464; 1992, c. 3.

### § 40.1-51.16. Appeals.

Any person aggrieved by an order or an act of the Board or Commissioner under this chapter may appeal such order or act to the Board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Final orders of the Board may be appealed pursuant to the Administrative Process Act.

1972, c. 237; 1986, c. 615; 1988, c. 289.

### § 40.1-51.17. Effect of chapter on local ordinances and regulations.

Nothing in this chapter shall be construed as repealing any valid local ordinance or regulation now in effect adopted pursuant to general law or charter provision; provided, however, that if any such ordinance or regulation is less strict than any standard rule or regulation promulgated or adopted by the Board, then such ordinance or regulation shall be superseded by the applicable standard or regulation of the Board except as provided in § 40.1-51.19.

1972, c. 237.

### § 40.1-51.18. Repealed.

Repealed by Acts 2015, c. 709, cl. 2.

### § 40.1-51.19. Variances.

Upon application pursuant to the provisions of subdivision (9) of § 40.1-6, the Commissioner may allow variances from a specific regulation provided the applicant proves by clear and convincing evidence his boiler or pressure vessel meets substantially equivalent operating criteria and standards.

1972, c. 237; 1990, c. 226.

## Article 2 - HOBBY AND MODEL BOILERS

### § 40.1-51.19:1. Definitions.

As used in this article:

"Hobby boiler" means any boiler used solely for demonstration, exhibition, ceremonial or educational purposes, including but not limited to, historical artifacts such as portable and stationary show boilers, farm traction engines, and locomotives.

"Model boiler" means any boiler fabricated to demonstrate an original design or to reproduce or replicate a historic artifact, and used primarily for demonstration, exhibition, or educational purposes.

1999, c. 335; 2000, c. 898.

### § 40.1-51.19:2. Applicability.

Hobby and model boilers may continue in operation but shall be in compliance with the provisions of this article by July 1, 2000.

1999, c. 335; 2000, c. 898.

### § 40.1-51.19:3. Inspection and testing.

A. A hobby or model boiler shall be inspected every two years inclusive. It shall be the duty of the owner of any hobby or model boiler to obtain and display an inspection certificate. A hobby or model boiler can be placed in nonoperating status upon written notification to the chief inspector. Normal inspection procedures apply when reinstating the boiler.

B. The inspection of every hobby or model boiler shall include an examination of or for the following:

1. The fusible plug, if provided in the original design.

2. The safety valve or valves. Such valve or valves shall be (i) marked with an American Society of Mechanical Engineers (ASME) stamp, (ii) set at or below the maximum allowable working pressure, and (iii) sealed in a manner that does not allow tampering with the valve without destroying the seal. The requirement of clause (i) shall be waived for model boilers upon the passage of an accumulation test.

3. Internal corrosion.

4. Leakage.

5. The boiler power piping, up to and including the first valve.

C. A hobby or model boiler shall be subjected to nondestructive testing, at the owner's expense, to determine the maximum allowable working pressure in accordance with Boiler and Pressure Vessel Regulations (16VAC25-50-10 et seq.).

D. All hobby and model boilers shall pass a hydrostatic test. The pressure shall be at one and one-quarter maximum allowable working pressure, as determined by the inspection certificate and as deemed necessary based on inspections or other evidence. A hobby or model boiler that does not meet the requirements of the ASME code and is not registered in the Commonwealth shall, at the owner's expense, be tested to one and one-half times the maximum allowable working pressure for hobby boilers and twice the maximum allowable working pressure for model boilers and, to be operated, shall have a successful (i) for lap seam and nonstandard welded boilers only, complete

radiographic or ultrasonic examination of the long or longitudinal seam; (ii) ultrasonic examination for metal thickness, and for the purpose of calculating the maximum allowable working pressure, the thinnest reading shall be used; and (iii) for hobby boilers with lap seam construction, dye penetrant or magnetic particle examination for cracks with an ultrasonic or radiographic examination of areas where testing shows possible cracks.

The requirements of this subsection for hobby boilers only testing to one and one-half times the maximum allowable working pressure or full radiographic or ultrasonic examination may be waived after the initial inspection if the inspector finds that the general standards of subsection B are met and the safety valve or valves are set at the maximum allowable working pressure determined by the following: calculations from the ultrasonic results or 100 pounds per square inch, whichever is lower. If a variance is requested for butt strap hobby boilers, the Commissioner shall not deny such variance request without a given, valid reason.

The requirements of this subsection for model boilers only for testing to twice the maximum allowable working pressure or full radiographic or ultrasonic examination may be waived after the initial inspection if the inspector finds that the general standards of subsection B are met and the safety valve or valves are set at the maximum allowable working pressure determined by the following: calculations from the ultrasonic results or 100 pounds per square inch, whichever is lower.

Any boiler which has been without a documented inspection within the past twenty years must have a two times maximum allowable working pressure hydro test prior to its operation.

E. Any hobby or model boiler holding a current out-of-state inspection certificate shall be accepted by the Commonwealth of Virginia, provided the inspection standards meet or exceed standards adopted by the Commonwealth.

1999, c. 335; 2000, cc. 879, 898.

### § 40.1-51.19:4. Operations and maintenance.

A. A hobby or model boiler must be attended by a person reasonably competent to operate such boiler when in operation. For the purposes of this section, a hobby or model boiler may be considered as not being in operation when all of the following conditions exist:

1. The water level is at least one-third of the water gauge glass;

2. The fire is banked and the draft doors closed or the fire is extinguished; and

3. The boiler pressure is at least twenty pounds per square inch below the lowest safety valve set pressure.

B. All welding performed on hobby or model boilers shall be done by an "R" stamp holder in accordance with the inspection code of the National Board of Boiler and Pressure Vessel Inspectors.

C. Repairs to longitudinal riveted joints are prohibited.

1999, c. 335; 2000, c. 898.

### § 40.1-51.19:4.1. Variances.

Upon application pursuant to the provisions of subdivision 9 of § 40.1-6, the Commissioner may allow variances from a specific statutory requirement of this article provided the applicant proves by clear and convincing evidence his hobby or model boiler meets substantially equivalent construction and operating criteria and standards.

2000, cc. 879, 898.

### § 40.1-51.19:5. Civil penalty.

A. It shall be unlawful for any person, firm, partnership or corporation to operate in the Commonwealth a hobby or model boiler without a valid certificate. Any such person shall be subject to a civil penalty as provided by § 40.1-51.12.

B. Any owner or user who leaves or causes to leave a hobby or model boiler unattended while in operation at an event to which members of the general public are invited shall be in violation of this article and subject to a civil penalty not to exceed $5,000. Each instance of such violation shall be deemed a separate offense.

1999, c. 335; 2000, c. 898.

## Chapter 3.2 - ASBESTOS NOTIFICATION

### § 40.1-51.20. Duties of licensed asbestos and certified lead contractors.

A. A licensed asbestos contractor and any certified lead contractor shall notify the Department of Labor and Industry at least twenty days prior to commencement of each asbestos or lead project. Notification shall be sent in a manner prescribed by the Department of Labor and Industry. The Department of Labor and Industry shall have the authority to waive all or any part of the twenty-day notice.

B. A licensed asbestos contractor or certified lead contractor shall obtain an asbestos or lead project permit from the Department of Labor and Industry prior to commencing each asbestos or lead project in accordance with this chapter and shall pay directly to the Commissioner a fee as established by the Safety and Health Codes Board pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The fees shall be sufficient but not excessive to cover the cost of administering the program. All fees collected pursuant to this section shall be paid into a special fund in the state treasury to the credit of the Department of Labor and Industry and shall be used in carrying out the Department's mission under this chapter.

The provisions of this subsection shall not apply to asbestos projects in residential buildings as defined by the Board in regulations adopted pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

C. A licensed asbestos contractor or certified lead contractor shall keep a record of each asbestos or lead project performed and shall make the record available to the Departments of Professional and Occupational Regulation and of Labor and Industry upon request. Records required by this section shall be kept for at least thirty years. The records shall include:

1. The name, address, and asbestos or lead supervisor's license or certification number of the individual who supervised the asbestos or lead project and each employee or agent who worked on the project;

2. The location and description of the project and the amount of asbestos or lead material that was removed;

3. The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards; and

4. The name and address of each disposal site where waste containing asbestos or lead was deposited, the results of the lead toxicity characteristic test, and the disposal site receipts.

1992, c. 477; 1995, cc. 543, 585; 1996, cc. 180, 846.

### § 40.1-51.21. Annual inspections.

At least once a year, during an actual project, the Department of Labor and Industry shall conduct an on-site unannounced inspection of each licensed asbestos contractor's, licensed RFS contractor's, and certified lead contractor's procedures in regard to installing, removing and encapsulating asbestos and lead. The Commissioner or an authorized representative shall have the power and authority to enter at reasonable times upon any property for this purpose.

1992, c. 477; 1995, cc. 543, 585.

### § 40.1-51.22. Enforcement of chapter.

A. Any person who commits the following violations of this chapter shall be subject to a civil penalty of up to $1,000 for an initial violation and $5,000 for each subsequent violation:

1. Failure to provide the notification required by § 40.1-51.20;

2. Improper notification as required by § 40.1-51.20. Improper notification shall include, but not be limited to, failing to provide required fees, intentionally failing to complete all required sections of the form, failing to properly amend a notification and providing information on the form; or

3. Any violations of safety or health provisions of Title 40.1 or any standard, rule or regulation adopted pursuant thereto, discovered during an inspection conducted pursuant to § 40.1-51.21 shall be enforced separately pursuant to § 40.1-49.4.

All procedural rights guaranteed to employers pursuant to § 40.1-49.4 shall apply to the penalties set under this section.

B. Investigation and enforcement for violations of this chapter shall be carried out by the Department of Labor and Industry. Prosecutions under this chapter shall be the responsibility of the Office of the Attorney General of Virginia. Civil penalties imposed for violation of this chapter shall be paid into the general fund.

1992, c. 477.

# Chapter 3.3 - VIRGINIA ASBESTOS NESHAP ACT

## § 40.1-51.23. Definitions.

As used in this chapter, which may be cited as the Virginia Asbestos NESHAP Act, the following terms shall have the meanings set forth in this section unless the context requires a different meaning:

"Asbestos" means any material containing more than one percent of asbestos by weight, which is friable or which has a reasonable chance of becoming friable in the course of ordinary or anticipated building use.

"Board" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry or his authorized representative.

"Department" means the Department of Labor and Industry.

"National Emissions Standards for Hazardous Air Pollutants" or "NESHAP" means those portions of the regulations contained in 40 CFR Part 61 under the federal Clean Air Act which deal with the demolition and renovation of asbestos facilities. The following list of sections of the CFR are included in the Board's authority but do not limit it: §§ 61.140; 61.141; 61.145; 61.146; 61.148; 61.150, except subsection (a) (4); 61.154, except subsection (d); and 61.156.

"Owner" means any person who owns, leases, operates, controls, or supervises the facility being demolished, renovated, sprayed, or insulated; any person who owns, leases, operates, controls, or supervises the demolition, renovation, spraying, or insulation operation; or both.

1992, c. 541.

## § 40.1-51.24. Department authorized to enter certain agreements.

The Department is hereby authorized to:

1. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter including, but not limited to, contracts with the United States, other states, agencies, and governmental subdivisions of the Commonwealth.

2. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable.

1992, c. 541.

## § 40.1-51.25. Safety and Health Codes Board to formulate rules, regulations, etc.

A. The Board is authorized to formulate definitions, rules, regulations and standards which shall be designed to ensure the proper demolition and renovation of asbestos facilities and effect compliance with the asbestos NESHAP requirements of the federal Environmental Protection Agency. Such standards shall be at least as stringent as the asbestos regulations passed pursuant to § 112 of the Clean Air Act. The regulations shall not promote or encourage any substantial degradation of present air

quality in any air basin or region which has an air quality superior to that stipulated in the regulations of the Department of Air Pollution Control. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. The Board in making regulations and in approving variances, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

1992, c. 541.

### § 40.1-51.26. Commissioner of Labor and Industry to enforce laws.

The Commissioner of Labor and Industry shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations of the Board;

2. Receive complaints as to asbestos NESHAP violations;

3. Hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce regulations pursuant to § 40.1-51.28;

4. Institute legal proceedings, including suits for injunctions for the enforcement of his orders, regulations of the Board, and for the enforcement of penalties;

5. Investigate any violations of this chapter and regulations;

6. Require that asbestos NESHAP records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulation; and

7. Upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth, subject to federal security requirements; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Commissioner or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or

inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have the power to seek an order compelling such entry or inspection, pursuant to § 40.1-49.9.

1992, c. 541.

### § 40.1-51.27. Inspections, investigations, etc.

The Commissioner is authorized to make or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter.

1992, c. 541.

### § 40.1-51.28. Issuance of special orders.

A. The Commissioner shall have the power to issue special orders to:

1. Owners who are permitting or causing asbestos NESHAP violations, to cease and desist from such violation;

2. Owners who have violated or failed to comply with the terms and provisions of any order of the Commissioner, to comply with such terms and provisions;

3. Owners who have contravened duly adopted asbestos NESHAP standards and regulations, to cease such contravention and to comply with air quality standards and policies; and

4. Require any owner to comply with the provisions of this chapter.

B. Such special orders are to be issued only after a hearing with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C. Should the Commissioner find that any such owner is unreasonably affecting the public health, safety or welfare, the health of animal or plant life, or property, after a reasonable attempt to give notice, he shall declare a state of emergency and may issue without a hearing an emergency special order directing the owner to cease such pollution immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the owner to affirm, modify, amend or cancel such emergency special order. If the Commissioner finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with § 40.1-51.35 or § 40.1-51.39.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the Commissioner, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 40.1-51.26 shall limit the Commissioner's authority to proceed against such owner directly under § 40.1-51.35 or § 40.1-51.39 without the prior issuance of an order, special, or otherwise.

1992, c. 541.

### § 40.1-51.29. Decision of Commissioner pursuant to hearing.

Any decision by the Commissioner rendered pursuant to hearings under § 40.1-51.28 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the decision is based. Certified copies of the written decisions shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with this section shall render such decision invalid.

1992, c. 541.

### § 40.1-51.30. Appeal to Board.

Any owner aggrieved by a final decision of the Commissioner under § 40.1-51.28 may file a notice of appeal to the Board within fifteen days. Such notice shall be in writing and addressed to the Commissioner.

1992, c. 541.

### § 40.1-51.31. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of § 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the Commissioner, the Commissioner shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the general fund of the state treasury.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

1992, c. 541.

### § 40.1-51.32. Owners to furnish plans, specifications and information.

Every owner which the Commissioner has reason to believe is causing, or may be about to cause, an asbestos NESHAP problem shall on request of the Commissioner furnish such plans, specifications and information as may be required by the Commissioner in the discharge of his duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in a public hearing and shall be kept confidential. If

samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

1992, c. 541.

### § 40.1-51.33. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Commissioner which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders of the Commissioner. It shall be the duty of each owner to notify the Commissioner of the existence of trade secrets when he desires the protection provided herein.

1992, c. 541.

### § 40.1-51.34. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Commissioner may at reasonable times enter any establishment or upon any property, public or private, subject to federal security requirements, to obtain information or conduct surveys or investigations.

1992, c. 541.

### § 40.1-51.35. Compelling compliance with regulations and orders of Board; penalty for violations.

A. Any owner violating or failing, neglecting or refusing to obey any asbestos NESHAP regulation or order of the Commissioner may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under this section, any owner violating or failing, neglecting or refusing to obey any Board regulation or order or any provision of this chapter shall be subject, in the discretion of the court, to a civil penalty not to exceed $25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any asbestos NESHAP regulation or order or any provision of this chapter, the Commissioner may provide, in any order issued by the Commissioner against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B and shall be paid into the state treasury.

1992, c. 541.

### § 40.1-51.36. Judicial review of regulations of Board.

The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1992, c. 541.

### § 40.1-51.37. Appeal from decision of Board.

Any owner aggrieved by a final decision of the Board under § 40.1-51.30 or of the Commissioner under subdivision 4 of § 40.1-51.26 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1992, c. 541.

### § 40.1-51.38. Appeal to Court of Appeals.

The Commonwealth or any party aggrieved by any final decision of the judge shall have, regardless of the amount involved, the right to appeal to the Court of Appeals. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

1992, c. 541.

### § 40.1-51.39. Penalties; chapter not to affect right to relief or to maintain action.

A. Any owner violating any provision of this chapter, Board regulation, or order of the Commissioner shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than $1,000 for each violation within the discretion of the court. Each day of continued violation after conviction shall constitute a separate offense.

B. Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

1992, c. 541.

### § 40.1-51.40. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Commissioner has reported any violation of this chapter or any regulation or order of the Board, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

1992, c. 541.

### § 40.1-51.41. Local ordinances.

A. Existing local ordinances adopted prior to July 1, 1972, shall continue in force; however, in the event of a conflict between a Board regulation, promulgated pursuant to this chapter, and a local ordinance, the Board regulation shall govern, except when the conflicting local ordinance is more stringent.

B. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to areas covered by asbestos NESHAP after June 30, 1972, shall first obtain the approval of the Board as to the provisions of the ordinance or amendment. The Board shall not approve any local ordinance less stringent than the pertinent regulations of the Board.

1992, c. 541.

# Chapter 4 - LABOR UNIONS, STRIKES, ETC

## Article 1 - IN GENERAL

### § 40.1-52. Authority of labor unions to own, encumber and sell real estate.

The trustees of any unincorporated association organized for mutual benefit and chartered as a labor union for the purpose of collective bargaining and other lawful functions of labor unions, as defined by the laws of this Commonwealth, and having a duly authorized charter as a local labor union, from either a state or national labor organization, shall have the right to own, possess, improve, sell or mortgage real estate. Such real estate can be acquired for any lawful purpose whatsoever.

Property acquired by an unincorporated association under the provisions of this section can be sold, mortgaged or the title transferred by such trustees in the same manner and to the same extent as if such trustees were natural persons acting for themselves in their individual capacity, under the laws of this Commonwealth.

The provisions of this section shall apply to any real estate acquired prior to July 1, 1997, by any such unincorporated association, provided such real estate is real estate that could be legally acquired by such unincorporated association, if acquired after such date.

Code 1950, § 40-63; 1966, c. 382; 1970, c. 321; 1997, c. 761.

### § 40.1-53. Preventing persons from pursuing lawful vocations, etc.; illegal picketing; injunction.

No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public ways.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly.

Notwithstanding the punishments herein provided any court of general equity jurisdiction may enjoin picketing prohibited by this section, and in addition thereto, may enjoin any picketing or interference with lawful picketing when necessary to prevent disorder, restrain coercion, protect life or property, or promote the general welfare.

Code 1950, § 40-64; 1952, c. 674; 1970, c. 321; 1974, c. 254.

### § 40.1-54. Payment of certain charges by carriers or shippers to or for benefit of labor organization.

(1) As used in this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which

exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways, and any such agreement shall be void and unenforceable.

(3) It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described above.

(4) Any corporation, association, organization, firm or person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described hereinabove shall be guilty of a misdemeanor and shall be fined not less than $100 nor more than $1,000 for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense.

Code 1950, § 40-64.1; 1962, c. 376; 1970, c. 321.

### § 40.1-54.1. Public policy as to strikes and work stoppages at hospitals.

It is hereby declared to be the public policy of the Commonwealth that hospitals shall be free from strikes, and work stoppages.

Code 1950, § 40-64.2; 1970, c. 720.

### § 40.1-54.2. Strikes and work stoppages at hospitals prohibited; penalty.

No employee of any hospital shall engage in any strike or work stoppage at such hospital which in any way interferes with the operation of such hospital.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and punished accordingly.

Notwithstanding the penalties herein provided, any court of general equity jurisdiction may enjoin conduct proscribed by this section.

Code 1950, § 40-64.3; 1970, c. 720.

### § 40.1-54.3. Right to vote by secret ballot on labor organization representation.

A. As used in this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

B. In any procedure providing for the designation, selection, or authorization of a labor organization to represent employees, the right of an individual employee to vote by secret ballot in such a procedure is a fundamental right that shall be guaranteed from infringement.

2013, c. 484.

## Article 2 - Strikes by Government Employees

### § 40.1-55. Employee striking terminates, and becomes temporarily ineligible for, public employment.

A. Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the Commonwealth, or any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.

B. The provisions of subsection A shall apply to any employee of any county, city, or town or local school board without regard to any local ordinance or resolution adopted pursuant to § 40.1-57.2 by such county, city, or town or school board that authorizes its employees to engage in collective bargaining.

Code 1950, § 40-65; 1970, c. 321; 2020, cc. 1209, 1276.

### § 40.1-56. Department head, etc., to notify employee of such termination, etc.

In any such case the head of any department of the state government, or the mayor of any city or town, or the chairman of the board of supervisors or other governing body of any county, or the head of any other such employing agency, in which such employee was employed, shall forthwith notify such employee of the fact of the termination of his employment and at the same time serve upon him in person or by registered mail a declaration of his ineligibility for reemployment as before provided. Such declaration shall state the fact upon which the asserted ineligibility is based.

Code 1950, § 40-66; 1970, c. 321.

### § 40.1-57. Appeal by employee from declaration of ineligibility.

In the event that any such employee feels aggrieved by such declaration of ineligibility he may within ninety days after the date thereof appeal to the circuit court of the county or the circuit court of the city in which he was employed by filing a petition therein for a review of the matters of law and fact involved in or pertinent to the declaration of ineligibility. A copy of the petition shall be served upon or sent by registered mail to the official signing the declaration, who may file an answer thereto within ten days after receiving the same. The court or the judge thereof in vacation shall, as promptly as practicable, hear the appeal de novo and notify the employee and the signer of the declaration of ineligibility of the time and place of hearing. The court shall hear such testimony as may be adduced by the respective parties and render judgment in accordance with the law and the evidence. Such judgment shall be final.

Code 1950, § 40-67; 1970, c. 321.

### § 40.1-57.1. Appeal by employer for reemployment of terminated employee.

Notwithstanding any provision of law to the contrary, in the event that the employer of an individual terminated under this article deems it necessary for the protection of the public welfare that such individual be reemployed within the twelve months following his termination, the employer may, within ninety days after the date of the declaration of ineligibility, appeal to the circuit court of the county or the circuit court of the city in which the individual was employed by filing a petition therein setting forth the reasons why the public welfare requires reemployment. A copy of the petition shall be served upon or sent by registered mail to the former employee, who may file an answer therein ten days after receiving the same. The court or the judge thereof in vacation shall notify the employer and former employee of the time and place of the hearing on the appeal, such hearing to be de novo and to be held as promptly as possible. The court shall hear such testimony as may be adduced by the respective parties and render judgment in accordance with the law and the evidence. Such judgment shall be final.

1972, c. 792.

## Article 2.1 - Collective Bargaining for Governmental Employees

### § 40.1-57.2. Collective bargaining.

A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

B. No ordinance or resolution adopted pursuant to subsection A shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.

C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

1993, cc. 868, 879; 2020, cc. 1209, 1276.

### § 40.1-57.3. Certain activities permitted.

Nothing in this article shall be construed to prevent employees of the Commonwealth, of its political subdivisions, or of any governmental agency of any of them from forming associations for the purpose of promoting their interests before the employing agency and, if they are employees of a county, city, or town or local school board that has, by a local ordinance or resolution as provided in § 40.1-57.2, authorized its employees to engage in collective bargaining, from doing so as provided in such ordinance or resolution.

1993, cc. 868, 879; 2020, cc. 1209, 1276.

## Article 3 - DENIAL OR ABRIDGEMENT OF RIGHT TO WORK

### § 40.1-58. Policy of article.

It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

Code 1950, § 40-68; 1970, c. 321.

### § 40.1-58.1. Application of article to public employers and employees.

As used in this article, the words, "person," "persons," "employer," "employees," "union," "labor union," "association," "organization" and "corporation" shall include but not be limited to public employers, public employees and any representative of public employees in this Commonwealth. The application of this article to public employers, public employees and their representatives shall not be construed as modifying in any way the application of § 40.1-55 to government employees.

1973, c. 79.

### § 40.1-59. Agreements or combinations declared unlawful.

Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy.

Code 1950, § 40-69; 1970, c. 321.

**§ 40.1-60. Employers not to require employees to become or remain members of union.**
No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

Code 1950, § 40-70; 1970, c. 321.

**§ 40.1-61. Employers not to require abstention from membership or officeholding in union.**
No person shall be required by an employer to abstain or refrain from membership in, or holding office in, any labor union or labor organization as a condition of employment or continuation of employment.

Code 1950, § 40-71; 1970, c. 321; 2002, c. 422.

**§ 40.1-62. Employer not to require payment of union dues, etc.**
No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

Code 1950, § 40-72; 1970, c. 321.

**§ 40.1-63. Recovery by individual unlawfully denied employment.**
Any person who may be denied employment or be deprived of continuation of his employment in violation of §§ 40.1-60, 40.1-61 or § 40.1-62 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this Commonwealth such damages as he may have sustained by reason of such denial or deprivation of employment.

Code 1950, § 40-73; 1970, c. 321.

**§ 40.1-64. Application of article to contracts.**
The provisions of this article shall not apply to any lawful contract in force on April 30, 1947, but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of an existing contract.

Code 1950, § 40-74; 1970, c. 321.

**§ 40.1-65. Agreement or practice designed to cause employer to violate article declared illegal.**
Any agreement, understanding or practice which is designated to cause or require any employer, whether or not a party thereto, to violate any provision of this article is hereby declared to be an illegal agreement, understanding or practice and contrary to public policy.

Code 1950, § 40-74.1; 1954, c. 431; 1970, c. 321.

**§ 40.1-66. Conduct causing violation of article illegal; peaceful solicitation to join union.**
Any person, firm, association, corporation, or labor union or organization engaged in lockouts, layoffs, boycotts, picketing, work stoppages or other conduct, a purpose of which is to cause, force, persuade or induce any other person, firm, association, corporation or labor union or organization to violate any provision of this article shall be guilty of illegal conduct contrary to public policy; provided that nothing

herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by union members of others to join a union, unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours.

Code 1950, § 40-74.2; 1954, c. 431; 1970, c. 321.

### § 40.1-67. Injunctive relief against violation; recovery of damages.

Any employer, person, firm, association, corporation, labor union or organization injured as a result of any violation or threatened violation of any provision of this article or threatened with any such violation shall be entitled to injunctive relief against any and all violators or persons threatening violation, and also to recover from such violator or violators, or person or persons, any and all damages of any character cognizable at common law resulting from such violations or threatened violations. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this article.

Code 1950, § 40-74.3; 1954, c. 431; 1970, c. 321.

### § 40.1-68. Service of process on clerk of State Corporation Commission as attorney for union.

Any labor union or labor organization doing business in this Commonwealth, all of whose officers and trustees are nonresidents of this Commonwealth, shall by written power of attorney, filed with the Department of Labor and Industry and the State Corporation Commission, appoint the clerk of the State Corporation Commission its attorney or agent upon whom all legal process against the union or organization may be served, and who shall be authorized to enter an appearance on its behalf. The manner of service of process on the clerk of the State Corporation Commission, the mailing thereof to the labor union or organization, the fees therefor, the effect of judgments, decrees and orders, and the procedure in cases where no power of attorney is filed as required, shall be the same as provided for in cases of foreign corporations.

Code 1950, § 40-74.4; 1954, c. 431; 1956, c. 430; 1970, c. 321.

### § 40.1-69. Violation a misdemeanor.

Any violation of any of the provisions of this article by any person, firm, association, corporation, or labor union or organization shall be a misdemeanor.

Code 1950, § 40-74.5; 1954, c. 431; 1970, c. 321; 1973, c. 425.

## Article 4 - MEDIATION AND CONCILIATION OF LABOR DISPUTES

### § 40.1-70. Department designated agency to mediate disputes.

The Department is hereby designated as the state agency authorized to mediate and conciliate labor disputes.

Code 1950, § 40-95.1; 1952, c. 697; 1970, c. 321.

### § 40.1-71. Notice of proposed termination or modification of collective bargaining contract; notice prior to work stoppage; injunctions and penalties.

Whenever there is in effect a collective bargaining contract covering employees of any utility engaged in the business of furnishing water, light, heat, gas, electric power, transportation or communication, the utility or the collective bargaining agent recognized by the utility and its employees shall not terminate or modify such contract until the party desiring such termination or modification serves written notice upon the Department of the proposed termination or modification at least thirty days prior to the expiration date thereof or, in the event such contract contains no expiration date, at least thirty days prior to the date it is proposed to make such termination or modification; provided, however, that a party having given notice of modification as provided herein shall not be required to give a notice of termination of the same contract.

Where there is no collective bargaining contract in effect, the utility or its employees shall give at least thirty days' notice to the Department prior to any work stoppage which would affect the operations of the utility engaged in the business of furnishing any of the utilities as described in this section.

If the utility or its employees, or the collective bargaining agent recognized by the utility and its employees, as the case may be, fails to give thirty days' notice as required by this section, the utility or its employees or such collective bargaining agent, as the case may be, may file a bill of complaint with the clerk of the circuit court having equity jurisdiction over the place of employment asking the court to temporarily enjoin such termination, modification or work stoppage until the proper notice has been served and the thirty-day period has been observed. The court shall have the authority to impose against any person who violates the notice provisions of this section a fine of up to $100 for each day such termination, modification or work stoppage continues until proper notice has been served and observed or against the collective bargaining agent the court shall have the authority to impose a fine of up to $1,000 for each day such termination or modification continues until proper notice has been served and observed.

Code 1950, § 40-95.2; 1952, c. 697; 1966, c. 92; 1970, c. 321; 1979, c. 515.

### § 40.1-72. Commissioner to notify Governor of disputes; mediation and conciliation.

Upon receipt of notice of any labor dispute affecting operation of the utility, the Commissioner shall forthwith notify the Governor and inform him of the nature of the dispute. If the Governor deems it necessary the Commissioner, or his designated agent, shall offer to meet and confer with the parties in interest and undertake to mediate and conciliate their differences. If the Governor deems it advisable, it shall be the duty of the utility and its employees, or designated representatives, to meet and confer with the Commissioner or his agent, at a time and place designated by the Commissioner, for the purpose of mediating and conciliating their differences.

Code 1950, § 40-95.3; 1952, c. 697; 1966, c. 92; 1970, c. 321.

### § 40.1-73. Commissioner to keep Governor informed of negotiations, etc.

The Commissioner shall keep the Governor fully informed as to the progress of the negotiations between the utility and its employees and shall report as soon as practical whether in his judgment a strike or lockout appears to be probable in any such dispute or, if a strike or lockout begins, whether continuation thereof is probable.

Code 1950, § 40-95.4; 1952, c. 697; 1970, c. 321.

### § 40.1-74. Right of entry.

In order to carry out the duties imposed by this article, the Commissioner or his designated agent shall have the right to enter upon the property of the utility.

Code 1950, § 40-95.5; 1952, c. 697; 1970, c. 321.

### § 40.1-75. Article not applicable when National Railway Labor Act applies.

Nothing in this article shall apply to any utility to which the National Railway Labor Act is applicable.

Code 1950, § 40-95.6; 1952, c. 697; 1970, c. 321.

## Article 5 - REGISTRATION OF LABOR UNIONS, LABOR ASSOCIATIONS AND LABOR ORGANIZATIONS

### §§ 40.1-76, 40.1-77. Repealed.

Repealed by Acts 1991, c. 443.

## Chapter 5 - CHILD LABOR

### § 40.1-78. Employment of children under fourteen and sixteen.

A. No child under fourteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation except as specified in this chapter.

B. No child under sixteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation during school hours unless he has reached the age of fourteen and is enrolled in a regular school work-training program and a work-training certificate has been issued for his employment as provided in § 40.1-88.

C. Nothing in this section shall affect the provisions of §§ 40.1-100 A, 40.1-100.1, 40.1-100.2, 40.1-101 and 40.1-102.

Code 1950, § 40-96; 1956, c. 567; 1960, c. 434; 1968, c. 264; 1970, c. 321; 1991, c. 511.

### § 40.1-79. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-79.01. Exemptions from chapter generally.

A. Nothing in this chapter, except the provisions of §§ 40.1-100 A, 40.1-100.1, 40.1-100.2, and 40.1-103, shall apply to:

1. A child engaged in domestic work when such work is performed in connection with the child's own home and directly for his parent or a person standing in place of his parent;

2. A child employed in occasional work performed outside school hours where such work is in connection with the employer's home but not in connection with the employer's business, trade, or profession;

3. A child 12 or 13 years of age employed outside school hours on farms, in orchards or in gardens with the consent of his parent or a person standing in place of his parent;

4. A child between the ages of 12 and 18 employed as a page or clerk for either the House of Delegates or the Senate of Virginia;

5. A child participating in the activities of a volunteer emergency medical services agency;

6. A child under 16 years of age employed by his parent in an occupation other than manufacturing; or

7. A child 12 years of age or older employed by an eleemosynary organization or unit of state or local government as a referee for sports programs sponsored by that eleemosynary, state, or local organization or by an organization of referees sponsored by an organization recognized by the United States Olympic Committee under 36 U.S.C. § 220522.

B. Nothing in this chapter, except §§ 40.1-100.1, 40.1-100.2, and 40.1-103, shall be construed to apply to a child employed by his parent or a person standing in place of his parent on farms, in orchards or in gardens owned or operated by such parent or person.

1991, c. 511; 1998, c. 30; 2003, c. 380; 2015, cc. 502, 503.

**§ 40.1-79.1. Exemptions from chapter generally; participation in volunteer fire company activities.**

A. Any county, city or town may authorize by ordinance any person residing anywhere in the Commonwealth, aged 16 years or older, who is a member of a volunteer fire company within such county, city, or town with parental or guardian approval, (i) to seek certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs; and (ii) to work with or participate in activities of such volunteer fire company, provided such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs. Nothing in this chapter shall prohibit participation by such persons in nonhazardous activities of a volunteer fire company, including fire prevention efforts and training courses approved by the Virginia Fire Services Board that are designed to provide situational awareness. Such ordinance shall not require a minor who achieved certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs, on or before January 1, 2006, between the ages of 15 and 16, to repeat the certification after his sixteenth birthday.

B. Any trainer or instructor of such persons mentioned in subsection A and any member of a paid or volunteer fire company who supervises any such persons shall be exempt from the provisions of § 40.1-103, provided that the provisions of § 40.1-100 have not been violated, when engaged in activities of a volunteer fire company, and provided that the volunteer fire company or the governing body

of such county, city or town has purchased insurance which provides coverage for injuries to or the death of such persons in their performance of activities under this section.

1982, c. 344; 1983, c. 123; 1991, c. 511; 2005, c. 151; 2006, c. 462; 2018, c. 181.

### § 40.1-80. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-80.1. Employment of children.

A. Except as provided in §§ 40.1-79.01, 40.1-88, 40.1-102, and 40.1-109, no child under sixteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation more than the number of hours per week or more than the number of hours per day or during the hours of the day that the Commissioner shall determine by regulations to be detrimental to the lives, health, safety or welfare of children. These regulations shall incorporate the standards contained in regulations promulgated by the United States Secretary of Labor pursuant to the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) concerning the number of hours per week, hours per day, and the hours of the day that children under the age of sixteen may work in, about, or in connection with, any gainful occupation.

B. No child shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work.

1991, c. 511.

### § 40.1-81. Repealed.

Repealed by Acts 1972, c. 480.

### § 40.1-81.1. Records to be kept by employers.

Every employer employing minors under sixteen years of age shall keep a time book or time cards or other appropriate records for such minor employees which shall show the beginning and ending time of work each day together with the amount of time designated as a free-from-duty meal period, which is deductible from the schedule of hours of work. The record for the preceding twelve months for each such minor employee shall be kept on the premises for a period of thirty-six months from the date of the latest work period recorded for the minor employee involved.

1972, c. 480; 1982, c. 134; 1991, c. 511.

### § 40.1-82. Repealed.

Repealed by Acts 1979, c. 219.

### § 40.1-83. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-84. Employment certificate required.

No child under sixteen years of age shall be employed, permitted or suffered to work, in, about or in connection with any gainful occupation with the exception of volunteer work or work on farms,

orchards and in gardens and except as provided in §§ 40.1-79.01, 40.1-101, and 40.1-102 unless the person, firm or corporation employing such child, procures and keeps on file and accessible to any school attendance officer, representative of the Department or other authorized persons, charged with the enforcement of this chapter, the employment certificate as hereinafter provided, issued for such child.

Code 1950, § 40-100; 1960, c. 434; 1966, c. 603; 1970, c. 321; 1972, cc. 480, 824; 1974, cc. 283, 525; 1979, c. 219; 1991, c. 511.

### § 40.1-85. Kinds of employment certificates.

Employment certificates shall be of two kinds: work-training certificate and vacation or part-time employment certificate.

Code 1950, § 40-100.1; 1970, c. 321; 1982, c. 135; 1991, c. 511.

### § 40.1-86. Repealed.

Repealed by Acts 1979, c. 219.

### § 40.1-87. Vacation or part-time employment certificate.

A vacation or part-time employment certificate shall permit the employment of a child between fourteen and sixteen years of age only during school vacation periods or on days when school is not in session, or outside school hours on school days.

Code 1950, § 40-100.3; 1958, c. 164; 1970, c. 321; 1979, c. 219; 1982, c. 136; 1991, c. 511.

### § 40.1-88. Work-training certificate.

A work-training certificate shall permit the employment of a child between fourteen and sixteen years of age during school hours when enrolled in a regular school work-training program pursuant to a written agreement containing the same provisions as specified in § 40.1-89.

Code 1950, § 40-100.4; 1970, c. 321; 1979, c. 219; 1982, c. 670.

### § 40.1-89. Same; employment not allowed; revocation of certificate.

No child shall be employed pursuant to a work-training certificate as provided in § 40.1-88 where such employment requires such child to work in any occupation which is deemed hazardous under § 40.1-100 A or regulations promulgated thereunder. However, a child sixteen or seventeen years of age may be employed in certain such occupations as part of a work-training program in accordance with rules and regulations promulgated by the Commissioner. No child shall work in a work-training program except pursuant to a written agreement which shall provide: (1) that the work of such child shall be incidental to his training, shall be intermittent and for short periods of time and shall be under the direct and close supervision of a competent and experienced person; (2) that safety instruction shall be given by the school and correlated with on-the-job training given by the employer; and (3) that a schedule of organized and progressive work processes to be performed shall have been prepared. Such written agreement shall set forth the name of the child so employed and shall be signed by the

employer and the coordinator of schools having jurisdiction. Copies of such agreement shall be retained by the school and the employer, and a copy thereof shall be filed with the Department.

Any such work-training certificate or written agreement may be revoked at any time that it shall appear that reasonable precautions for the safety of such child have not been observed.

Code 1950, § 40-100.4:1; 1960, c. 434; 1968, c. 277; 1970, c. 321; 1982, c. 252; 1991, c. 511.

### §§ 40.1-90, 40.1-91. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-92. Issuance of certificates.

A. The Commissioner shall prescribe the procedures for minors and employers concerning issuance and maintenance of employment certificates. The Commissioner may issue certificates both directly and electronically. Employment certificates shall be issued by the Department only upon application of the child desiring employment. The employment certificate shall not be valid unless permission is granted by a parent, guardian, or custodian through means specified by the Commissioner. The Department shall have authority to make any investigation or examination necessary for the issuance thereof. No fee shall be charged for issuing any such certificate nor for rendering any services in respect thereto. The Commissioner shall file and preserve such certificates and related documents.

B. No person shall, with the intent to assist a minor to procure employment, make a false statement by any means, including by submitting falsified forms electronically, to any employer or to any representative of the Commissioner in order to obtain the issuance of an employment certificate.

Code 1950, § 40-101; 1960, c. 434; 1970, c. 321; 1979, c. 219; 1991, c. 511; 2013, c. 15.

### § 40.1-93. Proof required for employment certificate.

The Department shall not issue an employment certificate until it has received, examined, approved, and filed the following:

1. Except for work coming within one of the exceptions in § 40.1-79.01, a statement signed by the prospective employer, or someone duly authorized on his behalf, stating that he expects to give such child present employment, setting forth the specific nature of the occupation in which he intends to employ such child, and the number of hours per day and of days per week which said child shall be employed and of the period for lunch. Such statement shall be submitted by means specified by the Commissioner; and

2. A statement, signed by the prospective employer or someone duly authorized on his behalf, submitted by means specified by the Commissioner, that the employer has verified the age of such minor. The employer shall procure and keep on file, accessible to the Department or other authorized persons charged with the enforcement of this chapter, the proof of age as provided in § 40.1-94.

Code 1950, § 40-102; 1960, c. 434; 1970, c. 321; 1972, c. 480; 1991, c. 511; 2013, c. 15.

### § 40.1-94. Proofs of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(1) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.

(2) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the child.

(3) Other documentary proof of age specified by the Commissioner.

Code 1950, § 40-103; 1970, c. 321.

### § 40.1-95. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-96. Contents of employment certificates.

The employment certificate required to be issued shall state the name, sex, date of birth, and place of residence of the child. It shall certify that all the conditions and requirements for issuing an employment certificate under the provisions of this chapter have been fulfilled and shall be signed by the Commissioner. It shall state the kind of evidence of age accepted for the employment certificate. Except for work coming within one of the exceptions in § 40.1-79.01, the certificate shall show the name and address of the employer for whom and the nature of the specific occupation in which the employment certificate authorizes the child to be employed and shall be valid only for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the child for whom it is issued by means specified by the Commissioner. The employment certificate shall be issued to the employer, by means specified by the Commissioner, on or prior to the first day of employment. The employer and Commissioner shall retain a manual or electronic copy of the certificate, so long as the youth is employed or for a period of 36 months, whichever is longer.

Code 1950, § 40-105; 1960, c. 434; 1970, c. 321; 1978, c. 596; 1991, c. 511; 2013, c. 15.

### § 40.1-97. Repealed.

Repealed by Acts 1972, c. 480.

### §§ 40.1-98, 40.1-99. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-100. Certain employment prohibited or limited.

A. No child under 18 years of age shall be employed, permitted, or suffered to work:

1. In any mine, quarry, tunnel, underground scaffolding work; in or about any plant or establishment manufacturing or storing explosives or articles containing explosive components; or in any occupation involving exposure to radioactive substances or to ionizing radiations, including X-ray equipment;

2. At operating or assisting to operate any grinding, abrasive, polishing, or buffing machine, any power-driven metal forming, punching, or shearing machine, any power-driven bakery machine, any

power-driven paper products machine, any circular saw, band saw, or guillotine shear, or any power-driven woodworking machine;

3. In oiling or assisting in oiling, wiping, and cleaning any such machinery;

4. In any capacity in preparing any composition in which dangerous or poisonous chemicals are used;

5. In any capacity in the manufacturing of paints, colors, white lead, or brick tile or kindred products, in any place where goods of alcoholic content are manufactured, bottled, or sold for consumption on the premises, except in places (i) licensed pursuant to subdivision 6 of § 4.1-206.1, provided that a child employed at the premises shall not serve or dispense in any manner alcoholic beverages or (ii) where the sale of alcoholic beverages is merely incidental to the main business actually conducted, or to deliver alcoholic goods;

6. In any capacity in or about excavation, demolition, roofing, wrecking, or shipbreaking operations;

7. As a driver or a helper on an automobile, truck, or commercial vehicle; however, children who are at least 17 years of age may drive automobiles or trucks on public roadways if:

a. The automobile or truck does not exceed 6,000 pounds gross vehicle weight, the vehicle is equipped with seat belts for the driver and any passengers, and the employer requires the employee to use the seatbelts when driving the automobile or truck;

b. Driving is restricted to daylight hours;

c. The employee has a valid state license for the type of driving involved and has no record of any moving violations at the time of hire;

d. The employee has successfully completed a state-approved driver education course;

e. The driving does not involve (i) the towing of vehicles; (ii) route deliveries or route sales; (iii) the transportation for hire of property, goods, or passengers; (iv) urgent, time-sensitive deliveries; or (v) the transporting at any time of more than three passengers, including the employees of the employer;

f. The driving performed by the employee does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer;

g. The driving performed by the employee does not involve more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers, other than employees of the employer;

h. The driving takes place within a 30-mile radius of the employee's place of employment; and

i. The driving is only occasional and incidental to the employee's employment and involves no more than one third of the employee's work time in any workday and no more than 20 percent work time in any workweek;

8. In logging or sawmilling or in any lath mill, shingle mill, or cooperage-stock mill or in any occupation involving slaughtering, meatpacking, processing, or rendering;

9. In any occupation determined and declared hazardous by rules and regulations promulgated by the Commissioner of Labor and Industry, except as otherwise provided in subsection D.

Notwithstanding the provisions of this section, children 16 years of age or older who are serving a voluntary apprenticeship as provided in Article 3 (§ 2.2-2043 et seq.) of Chapter 20.2 of Title 2.2 may be employed in any occupation in accordance with rules and regulations promulgated by the Commissioner.

B. Except as part of a regular work-training program in accordance with §§ 40.1-88 and 40.1-89, no child under 16 years of age shall be employed, permitted, or suffered to work:

1. In any manufacturing or mechanical establishment; in any commercial cannery; in the operation of any automatic passenger or freight elevator; in any dance studio; in any hospital, nursing home, clinic, or other establishment providing care for resident patients as a laboratory helper, therapist, orderly, or nurse's aide; in the service of any veterinarian while treating farm animals or horses; in any warehouse; in processing work in any laundry or dry cleaning establishment; in any undertaking establishment or funeral home; in any curb service restaurant; in hotel and motel room service; in any brick, coal, or lumber yard or ice plant; or in ushering in theaters. Children 14 years of age or older may be engaged in office work of a clerical nature in bona fide office rooms in the above types of establishments.

2. In any scaffolding work or construction trade; in any outdoor theater, cabaret, carnival, fair, floor show, pool hall, club, or roadhouse; or as a lifeguard at a beach.

C. Children 14 years of age or older may be employed by dry cleaning or laundry establishments in branch stores where no processing is done on the premises and in hospitals, nursing homes, and clinics where they may be engaged in kitchen work, tray service, or room and hall cleaning. Children 14 years of age or older may be employed in bowling alleys completely equipped with automatic pin setters, but not in or about such machines, and in soda fountains, restaurants, and hotel and motel food service departments. Children 14 years of age or older may work as gatekeepers and in concessions at swimming pools and may be employed by concessionaires operating on beaches where their duties and work pertain to the handling and distribution of beach chairs, umbrellas, floats, and other similar or related beach equipment.

D. Notwithstanding any other provision of this chapter:

1. Children age 16 years or older employed on farms, in gardens, or in orchards may operate, assist in operating, or otherwise perform work involving a truck, excluding a tractor trailer, or farm vehicle, as defined in § 46.2-1099, in their employment;

2. Children age 14 years or older employed on farms, in gardens, or in orchards may perform work as a helper on a truck or commercial vehicle in their employment, while engaged in such work exclusively on a farm, in a garden, or in an orchard;

3. Children age 16 years or older may participate in all activities of a volunteer fire company; however, any such child shall not enter a burning structure or a structure that contains burning materials prior to obtaining certification under National Fire Protection Association 1001, level one, firefighter standards, pursuant to the provisions of clause (i) of subsection A of § 40.1-79.1, except where entry into a structure that contains burning materials is during training necessary to attain certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs;

4. Children age 16 years or older who are registered apprentices as provided in Article 3 (§ 2.2-2043 et seq.) of Chapter 20.2 of Title 2.2 may serve in a barbershop or cosmetology salon licensed by the Board for Barbers and Cosmetology in accordance with regulations of the Board for Barbers and Cosmetology.

Code 1950, § 40-109; 1956, cc. 443, 463; 1958, c. 321; 1960, c. 434; 1964, c. 503; 1968, c. 278; 1970, c. 321; 1972, c. 824; 1973, c. 13; 1979, cc. 219, 348; 1991, c. 511; 1994, c. 156; 2005, c. 151; 2007, c. 645; 2008, c. 552; 2009, c. 218; 2020, cc. 1113, 1114; 2023, cc. 275, 624, 625.

**§ 40.1-100.1. Employment where hazard capable of causing serious physical harm or death.**

No person shall employ, suffer, or permit a child to work in any gainful occupation that exposes such child to a recognized hazard capable of causing serious physical harm or death to such child. Any person violating this section shall be subject to a civil monetary penalty in accordance with § 40.1-113 of this chapter.

1991, c. 511.

**§ 40.1-100.2. Employment involving sexually explicit visual material prohibited.**

A person under eighteen years of age shall not perform in or be a subject of sexually explicit visual material. As used in this section, "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film or similar visual representation which is obscene for children, as defined in § 18.2-374.1, and which depicts nudity, sexual excitement, sexual conduct, sexual intercourse or sadomasochistic abuse, as defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other action is necessary to make its sexually explicit content apparent. A person who employs, permits or suffers a person to be employed or work in violation of this section is guilty of a Class 6 felony.

1991, c. 511.

**§ 40.1-101. Qualifications as to theaters.**

Notwithstanding the provisions of §§ 40.1-100 and 40.1-100.1, a child under sixteen years of age, whether a resident or nonresident of the Commonwealth, may be employed, permitted or suffered to

participate in the presentation of a drama, play, performance, concert or entertainment, provided the management of the theater or other public place where such performance is to be held in the Commonwealth shall secure a permit from the Commissioner; provided, that no such permit shall be required for any nonprofit dance or music recital, nor for any television or radio broadcast in which the children participating are selected by the television or radio broadcasting station for sustaining noncommercial programs.

Code 1950, § 40-110; 1960, c. 434; 1970, c. 321; 1973, c. 13; 1979, c. 348; 1991, c. 511.

### § 40.1-102. Issuance of theatrical permit.

No permit shall be issued unless the Commissioner is satisfied that the environment in which the drama, play, performance, concert or entertainment is to be produced is a proper environment for the child and that the conditions of such employment are not detrimental to the health or morals of such child and that the child's education will not be neglected or hampered by its participation in such drama, play, performance, concert or entertainment. Applications for permits and every permit granted shall specify the name, age and sex of each child, together with such other facts as may be necessary for the proper identification of each child and the dates when, and the theaters or other places of amusement in which such drama, play, performance, concert or entertainment is to be produced and shall specify the name of the drama, play, performance, concert or entertainment in which each child is permitted to participate. Such application shall be filed with the Commissioner not less than five days before the date of such drama, play, performance, concert or entertainment. A permit shall be revocable by the Commissioner should it be found that the environment in which the drama, play, performance, concert or entertainment is being produced is not a proper environment for the child and that the conditions of such employment are detrimental to the health or morals of such child. The Commissioner shall prescribe and supply the forms required for carrying out the provisions of this section.

Code 1950, § 40-111; 1960, c. 434; 1970, c. 321.

### § 40.1-103. Cruelty and injuries to children; penalty; abandoned infant.

A. It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, beaten or cruelly treated. Any person violating this section is guilty of a Class 6 felony.

B. If a prosecution under this section is based solely on the accused parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child within the first 30 days of the child's life to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services agency that employs emergency medical services personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. In order for

the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

Code 1950, § 40-112; 1970, c. 321; 1991, c. 511; 2003, cc. 816, 822; 2006, c. 935; 2015, cc. 502, 503; 2022, cc. 80, 81.

### § 40.1-104. Age certificates.

An age certificate shall be issued, upon request of the employer or the worker, for a person sixteen years of age or over. It shall be issued by the person authorized to issue employment certificates under the provisions of this chapter upon presentation of the same evidence of age as required for an employment certificate. The age certificate shall show the person's name and address, his date of birth and signature, the signature of the person issuing the certificate and the evidence accepted as proof of age.

An employment or age certificate duly issued shall be conclusive evidence of the age of the person for whom issued in any proceeding involving the employment of the person under any of the labor laws of this Commonwealth as to any act occurring subsequent to its issuance and prior to its revocation.

Code 1950, § 40-113; 1970, c. 321; 1972, c. 824; 1979, c. 219.

### § 40.1-105. Repealed.

Repealed by Acts 1991, c. 511.

### §§ 40.1-106 through 40.1-108. Repealed.

Repealed by Acts 1979, c. 219.

### § 40.1-109. Newspaper carriers on regular routes; hours.

Notwithstanding the other provisions of this chapter, any child between twelve and sixteen years of age may daily engage in the occupation of distributing newspapers on regularly established routes between the hours of four o'clock ante meridian and seven o'clock post meridian, excluding the time public schools are actually in session.

Code 1950, § 40-118; 1960, c. 434; 1962, c. 352; 1970, c. 321; 1972, c. 807; 1973, c. 13; 1979, c. 219; 1982, c. 83; 1991, c. 511.

### § 40.1-110. Repealed.

Repealed by Acts 1979, c. 219.

### § 40.1-111. Repealed.

Repealed by Acts 1991, c. 511.

### § 40.1-112. Solicitation generally.

A. In order to provide for enforcement of the child labor laws and the protection of employees, it shall be unlawful for any person, firm or corporation, except a nonprofit organization as defined in § 501(c)(3) of the United States Internal Revenue Code, to engage in or to employ any person for, or suffer or permit any person in his employment to work in, any trade in any street or public place, including but not limited to candy sales or soliciting for commercial purposes, selling, or obtaining subscription

contracts or orders for books, magazines or other periodical publications other than newspapers, without obtaining from the Commissioner a permit to conduct such business. No permit shall be required for the placement of advertisements or literature on or near a business or private residence, if there is no attempt, in person, to solicit business or make a sale at the time of the placement of the material.

B. Such permits shall be valid from the date of issuance until June 30 next following the date of issuance. Applications may be made not more than thirty days prior to the requested date of issuance on forms furnished by the Commissioner, and the applicant shall supply such information as is required concerning his place or places of business, the prospective number of his employees, and the proposed hours of work and rate of compensation for such employees. A separate permit shall be required for each place of business which the applicant operates within this Commonwealth.

C. Each permittee shall maintain such records as may be prescribed by the Commissioner showing the name, residence address and age of each employee, the hours worked by each employee, the place where such work was performed, and the compensation paid and payable to such employee. Such records shall be available for inspection by the Commissioner or a representative designated by him during business hours.

D. No child shall be employed or permitted to work by or for any permittee unless all the following conditions are satisfied:

1. The child is at least sixteen years of age;

2. The permittee has a permanent business address within this Commonwealth; and

3. The child works at all times under the immediate supervision of an adult.

E. No child shall be required, permitted or directed to make any false statement representing himself, his employer or products or services in his employment.

F. Any person violating any provision or condition of this section shall be guilty of a Class 1 misdemeanor for each such violation. Any violation of this section by a permittee or with his knowledge and consent shall in addition be grounds for revocation of the permit.

Code 1950, § 40-118.3; 1964, c. 315; 1966, c. 603; 1968, c. 743; 1970, c. 321; 1973, c. 13; 1979, c. 219; 1982, c. 137; 1991, c. 511; 1998, c. 157.

**§ 40.1-113. Child labor offenses; civil penalties.**

A. Whoever employs, procures, or, having under his control, permits a child to be employed in violation of any of the provisions of this chapter other than §§ 40.1-100.2, 40.1-103 and 40.1-112, shall be subject to a civil penalty that (i) shall not exceed $10,000 for each violation that results in the employment of a child who is seriously injured or who dies in the course of that employment and (ii) shall not exceed $1,000 for each other violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

B. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact.

C. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties which are not contested by employers.

Code 1950, § 40-119; 1964, c. 504; 1970, c. 321; 1973, c. 425; 1979, c. 348; 1982, c. 416; 1991, c. 511; 2007, c. 667; 2015, c. 285.

### § 40.1-114. Enforcement of child labor law.

The Commissioner, with the assistance of state and local law-enforcement officers, shall enforce the provisions of this chapter and shall have authority to appoint such representatives as may be necessary to secure the enforcement of this chapter. He shall make all necessary rules and regulations for carrying out the purposes of this chapter, and shall prescribe such forms as may be required for carrying out the provisions of this chapter.

Code 1950, § 40-120; 1970, c. 321; 1979, c. 219; 2015, c. 285.

### § 40.1-115. School attendance.

Nothing contained in this chapter shall be construed as qualifying in any way the provisions of the compulsory education laws of this Commonwealth, nor as authorizing the employment of any child who is absent unlawfully from school.

Code 1950, § 40-121; 1970, c. 321.

### § 40.1-116. Curfew ordinances not affected.

Nothing in this chapter shall be construed to permit the violation of a curfew ordinance of any city.

Code 1950, § 40-122; 1970, c. 321.

## Chapter 6 - Voluntary Apprenticeship [Repealed]

### §§ 40.1-117 through 40.1-127. Repealed.

Repealed by Acts 2023, cc. 624, 625, cl. 2.

## Chapter 7 - PASSENGER TRAMWAY SAFETY [Repealed]

### §§ 40.1-128 through 40.1-134. Repealed.

Repealed by Acts 1991, c. 152.

## Chapter 8 - REGISTER OF SAFETY AND HEALTH LAW VIOLATORS [Repealed]

### §§ 40.1-135 through 40.1-138. Not effective.

Not effective.

## Chapter 9 - INDUSTRIAL HYGIENE AND SAFETY PROFESSION TITLE PROTECTION ACT

### § 40.1-139. Definitions.

As used in this chapter:

"American Board of Industrial Hygiene" or "ABIH" means a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, examination and maintenance requirements.

"Associate Safety Professional" or "ASP" means an individual who has been certified by the Board of Certified Safety Professionals as an Associate Safety Professional and whose certification has not lapsed or been revoked.

"Board of Certified Safety Professionals" or "BCSP" means a nonprofit corporation established to improve the practice and educational standards of the safety profession by certifying individuals who meet its education, experience, examination, and maintenance requirements.

"Certified Associate Industrial Hygienist" or "CAIH" means an individual who has been certified by the American Board of Industrial Hygiene as a Certified Associate Industrial Hygienist and whose certification has not lapsed or been revoked.

"Certified Industrial Hygienist" or "CIH" means an individual who has been certified by the American Board of Industrial Hygiene as a Certified Industrial Hygienist and whose certification has not lapsed or been revoked.

"Certified Safety Professional" or "CSP" means an individual who has been certified by the Board of Certified Safety Professionals as a Certified Safety Professional and whose certification has not lapsed or been revoked.

"Construction Health and Safety Technologist" or "CHST" means an individual who, by virtue of education, experience and examination, has been certified by the American Board of Industrial Hygiene

and the Board of Certified Safety Professionals as a Construction Health and Safety Technologist and whose certification has not lapsed or been revoked.

"Industrial Hygiene" means the science and art devoted to the anticipation, recognition, evaluation, and control of environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers, and that may also affect the workplace's community.

"Industrial Hygienist in Training" or "IHIT" means an individual certified by the American Board of Industrial Hygiene as an Industrial Hygienist in Training and whose certification has not lapsed or been revoked.

"Occupational Health and Safety Technologist" or "OHST" means an individual certified by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals as an Occupational Health and Safety Technologist and whose certification has not lapsed or been revoked.

"Safety Profession" means the science and discipline concerned with the preservation of human and material resources through the systematic application of principles drawn from technological advancements in the fields of education, design, chemistry, the physical and biological sciences, ergonomics, psychology, physiology, and management for anticipating, identifying and evaluating potentially hazardous systems, conditions and practices, and for developing, implementing, administering, and advising others on hazard control design, methods, procedures, and programs.

2001, c. 742.

### § 40.1-140. Prohibited actions.

A. No person shall use in conjunction with his name the letters or words "Industrial Hygienist in Training," "IHIT," "Certified Associate Industrial Hygienist," "CAIH," "Certified Industrial Hygienist," "CIH," or a variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the American Board of Industrial Hygiene.

B. No person shall use in conjunction with his name the letters or words "Associate Safety Professional," "ASP," "Certified Safety Professional," "CSP," or a variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the Board of Certified Safety Professionals.

C. No person shall use in conjunction with his name the letters or words "Occupational Health and Safety Technologist," "OHST," "Construction Health and Safety Technologist," "CHST," or variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals.

D. No person shall represent to the public that he is an Industrial Hygienist in Training, Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Associate Safety Professional, Certified Safety Professional, Construction Health and Safety Technologist, or Occupational Health and Safety

Technologist unless he has been certified as such by the ABIH, BCSP, or both, as applicable, and such certification has not lapsed or been revoked.

2001, c. 742.

### § 40.1-141. Enforcement.

The Attorney General or any aggrieved person may cause an action to be brought in the circuit court of the city or county in which a violation of this chapter has occurred for the issuance of an injunction to enjoin and restrain the continuance of such violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated this chapter, an injunction may be issued by such court enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. The circuit court having jurisdiction may enjoin such violations, notwithstanding the existence of an adequate remedy at law.

2001, c. 742.

### § 40.1-142. Exemptions.

A. The provisions of this chapter shall not prohibit any person who is not certified as a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist from performing industrial hygiene and safety functions so long as such person does not represent himself to the public as being a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist.

B. Nothing in this chapter shall be construed as authorizing a person certified as a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist to engage in the practice of architecture or engineering, nor to restrict or otherwise affect the rights of any person licensed as an architect or professional engineer under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1.

C. Nothing in this chapter shall apply to employees of the Department while they are engaged in the business of the Commonwealth; however, this subsection shall not be construed to authorize an employee of the Department to use any of the certifications defined in § 40.1-139 unless such employee has been certified as such by the ABIH, BCSP, or both, as applicable, and such certification has not lapsed or been revoked.

D. Nothing in this chapter shall bar an otherwise qualified expert witness from testifying in a court of this Commonwealth.

2001, c. 742.