

**REVISION OF CERTAIN LABOR LAWS CONTAINED
IN CHAPTERS 1, 2 AND 3 OF TITLE 40 OF
THE CODE OF VIRGINIA**

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



SD 8, 1962

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1961

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REPORT
OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, October 19, 1961.

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

THE GENERAL ASSEMBLY OF VIRGINIA

Much of the language contained in Chapters 1, 2 and 3 of Title 40 of the Code is obsolete, the major part remaining unchanged since 1914. Since then industrial and employment conditions have changed greatly. New methods, processes and jobs have been created which cannot be adequately regulated by statutes designed for 1914—the Tin Lizzy period. Today greater flexibility is required if the welfare of the employees and employers of the Commonwealth is to be protected. The General Assembly of 1960 was of the opinion that an overall study of the statutes contained in Chapters 1, 2 and 3 of Title 40 dealing, generally, with the Department of Labor and Industry, employment agencies and the protection of employees, with a view to conforming them to modern conditions, was necessary.

Accordingly, the following resolution was adopted directing the Virginia Advisory Legislative Council to make the indicated study and

SENATE JOINT RESOLUTION NO. 43

Directing the Virginia Advisory Legislative Council to study certain portions of the labor laws of Virginia.

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to make a study of those parts of the labor laws of Virginia relating to the Bureau of Labor and Industry, employment agencies, and the protection of employees generally, as contained in Chapters 1, 2 and 3 of Title 40 of the Code of Virginia. The Council shall determine whether these statutes conform to modern conditions, whether they accomplish the results intended, and whether they are unduly restrictive in any way. All agencies of the State shall assist the Council on its request. The Council shall complete its study and make a report containing its findings and recommendations to the Governor and General Assembly not later than October one, nineteen hundred sixty-one.

The Council assigned this study to Charles R. Fenwick, member of the Senate from Arlington, to serve as Chairman of a Committee to make the initial investigation and report in this area. The following served with Senator Fenwick in this study: Edmond M. Boggs, Commissioner of Labor, Richmond; Mrs. James F. Boone, Blacksburg; P. R. Clarke, Johns-Manville Products Corporation, Jarratt; M. A. Cross, Dan River Mills, Inc., Danville; S. Bolling Hobbs, an attorney, Lynchburg; John A. Jones, Jr., Celanese Corporation of America, Narrows; James F. Madison, Brotherhood of Maintenance of Way Employees, Buchanan; J. T. Matthews, Sears, Roebuck and Company, Richmond; Archie F. Parrish, restaurateur, Roanoke; W. S. Richardson, restaurateur, Richmond; C. H. Robertson, Albemarle Paper Manufacturing Company, Richmond; Brewster Snow, A.F.L.-C.I.O., Richmond; George C. Towner, Jr., an attorney, Arlington.

The Committee elected Mrs. Boone to serve as Vice-Chairman. John B. Boatwright, Jr., and Fletcher W. Harkrader, Jr., served as Secretary and Recording Secretary, respectively, to the Committee.

The Department of Labor and Industry gave valuable information and assistance to the Committee. The participation of the representatives of this Department was of great assistance in pointing up areas in which changes seem desirable.

The Committee made a thorough study of the sections designated. This study disclosed inadequacies, lack of clarity, administrative inflexibility, and a general lack of responsiveness to the needs of modern socio-economic society. The Committee found that many of the sections studied no longer serve any useful purpose, the problems which they were designed to eliminate having long since vanished. The Committee made its report to the Council and the Council after study of that report makes the recommendations which follow, we have endeavored to weed out the useless, make strong the weak and fill existing voids with responsive administrative machinery, all for the protection of employees and employers. The following are the changes which we believe are desirable.

SPECIFIC RECOMMENDATIONS AND REASONS THEREFOR

Labor Laws Generally

1. § 40-1. We recommend that this section be rewritten so as to refer to the Department of Labor and Industry rather than the Bureau of Labor and Industry, and the Commissioner of Labor and Industry rather than the Commissioner of Labor. The reasons for these changes are, to standardize reference to the Department and Commissioner throughout the sections for the purpose of clarity and consistency. Other sections of the Code already refer to the Department and Commissioner in the aforementioned manner. Further, the term Commissioner of Labor is misleading in that the duties of the Commissioner make him responsible to both employees and management. Thus, the term Commissioner of Labor and Industry is more appropriate. This is true of the title of the agency which he heads.

2. § 40-1.1. This is a new section recommended in order to define terms used throughout Title 40 in order to avoid needless repetition of complete definitions. The terms defined are "Department" meaning Department of Labor and Industry, "Commissioner" meaning the Commissioner of Labor and Industry, "employer", "employee", "business establishment" and "machinery". Agricultural employment on a farm

is excluded under this definition ; however, no mention is made of orchards, gardens, etc., which are excluded generally throughout the labor laws.

3. § 40-1.2. This is a new section recommended in order to make clear that the provisions of Title 40 designated to foster the safety of employees shall not run to the benefit of third parties who are already amply protected.

4. § 40-2. This section is rewritten to insert defined terms, and to include in the subjects to be covered in annual reports to the Governor statistical details concerning safety of employees as well as commercial, industrial, social, educational and sanitary conditions. Also, reports on business and commercial institutions of the State will be included in addition to reports on productive industries in the annual report.

5. § 40-3. This section is modified solely to change the term "Commissioner of Labor" to "Commissioner of Labor and Industry".

6. § 40-4. This section is rewritten to insert defined terms where appropriate. The term "representatives and investigators" is used in lieu of "factory inspectors" since the former term is more descriptive of the persons appointed than the latter. The Commissioner is given the power to make rules and regulations not inconsistent with the provisions of Titles 40 and 45, and subject to Chapter 1.1 of Title 9, the Administrative Agencies Act. The Commissioner or his assistants are given the power of investigating as well as visiting and inspecting at reasonable hours business establishments throughout the State.

7. § 40-5. This section is rewritten so as to eliminate the word "deputies" of the Commissioner from those who may request Commonwealth's attorneys to prosecute violations of the law or rules and regulations adopted thereunder. This power should be restricted as it is here.

8. § 40-6. The defined term "Commissioner" is inserted in this section, and the requirement that local officials furnish statistical information is broadened to include other information as well, so long as that information will assist the Department in the discharge of its duties.

9. § 40-7. The defined terms "Department" and "employees" are inserted in this section in order to conform the sections with the rest of the title.

10. § 40-8. In this section it is made a misdemeanor for any person in charge of any business establishment to interfere with the investigation thereof by the Commissioner or any of his assistants as interference with inspections is already a misdemeanor. The defined term "business establishment" is inserted in this section in lieu of listing the various types of establishments covered.

11. § 40-9. This section is amended to insert the defined terms "Commissioner" and "Department" where appropriate and to provide that its provisions extend to cover Title 45 as well as Title 40. This section deals with limiting the use of information or statistics gathered by the Department personnel to department purposes as enumerated in Titles 40 and 45.

Employment Agencies

12. § 40-9.1. A new section numbered 40-9.1 is added defining the terms

“fee”, “employer”, “employee”, “employment” and “employment agency” for the purposes of a new section on employment agencies which will be numbered 40-9.2.

12(a). § 40-9.2. A new section numbered 40-9.2, regulating employment agencies, is added. This provides for a license for all employment agencies on and after July 1, 1962, which can be obtained from the Department, and runs for one year. A separate license is required for each location at which business is conducted. The license is nontransferable and costs ten dollars. The Commissioner is empowered to make rules and regulations requiring the furnishing of information by applicants for license in order to enable him to determine their fitness.

12(b). § 40-10. In this section terms defined in § 40-9.1 are inserted where appropriate. Employment agencies are required to keep a record for three years of the disposition of each application made to them subject to review by the Commissioner. This information will be helpful to the Department in learning the whereabouts of employees, particularly in the case of wage and hour complaints.

12(c). § 40-11. It is recommended that this section be reworded so that the terms used will be in accord with the phraseology utilized throughout the title.

12(d). § 40-12. Language is added to § 40-12 to require an employment agency to return any registration fee charged to an applicant after 30 days if suitable employment is not offered by the employment agency to him. This is designed to control certain fly-by-night employment agencies which collect fees from unsuspecting persons and then disappear.

12(e). § 40-17. This section should be repealed as its provisions are included in § 40-4.

12(f). § 40-18. The fine for violation of any of the provisions of Chapter 2, subject to the provisions of § 40-19, should be raised from not less than \$10 to not less than \$25. This is suggested in order that the penalty provision exceed the cost of the license required by the chapter and to make the penalty consistent with the present inflated economy.

Safety Codes Commission

13. § 40-20. This section should be completely rewritten in order to provide for a flexible, responsive administrative apparatus for protecting the safety of employees without unnecessary restriction amid the work in which the modern employee is engaged. A five-member commission to be referred to as the Safety Codes Commission is established. Four of the members are appointed by the Governor, with one to represent labor, two to represent the employer and one to represent the general public; the Commissioner of Labor and Industry serves as the fifth member of the Commission. Members would serve for four years. The appointed members of the Commission would receive a per diem of \$15 and expenses.

The Commission would study and investigate safety in business establishments, the application of Title 45 thereto and, in general, it would serve as an advisor to the Commissioner. Provision is made in this section and in § 40-61.3 for appealing from the Commissioner's

rulings concerning enforcement of §§ 40-44, 40-45, 40-55, 40-58, 40-61, 40-61.1 and 40-61.2. The ruling of the Safety Codes Commission concerning appeals from these sections is binding on the Commissioner. The Safety Codes Commission with the advice of the Commissioner would be authorized to adopt and repeal rules and regulations to protect the safety and health of employees and the Commissioner enforces them. The Commission will make no rule or regulation in conflict with the provisions of Title 40 and all of its actions will be subject to Chapter 1.1 of Title 9, the Administrative Agencies Act. It is our belief that the Safety Codes Commission will protect employees without being unnecessarily restrictive on the activities of employers in an age where manufacturing processes and the nature of jobs themselves are in a perpetual state of change.

Protection of Employees

14. § 40-21. This section is amended by inserting the defined term "Department" for Department of Labor and Industry which is empowered to enter into agreements with the Wage and Hour Division of the Children's Bureau, U. S. Department of Labor, for the enforcement of the Fair Labor Standard Act and amendments thereto. Previously there had been no mention of amendments to this act.

15. § 40-22.1. This section is amended so as to eliminate the definition of "employer" and "employee" since they are defined in § 40-1.1.

16. § 40-23. This section is repealed since its provisions have been incorporated in the revised § 40-24.

17. § 40-24. This section has been completely rewritten so as to include the major provisions currently contained in §§ 40-23 through 40-26. The section provides for regular pay periods, termination payment, how wages are to be paid and provides a prohibition against withholding of wages without consent. It requires an employer upon request to furnish a written statement to his employee of gross wages and deductions therefrom. The provisions as to payment of advances of wages in script, in §§ 40-27 and 40-28, are obsolete and should be eliminated.

The fine for violation of the revised section is set at not less than \$25 or more than \$100. The Commissioner may require a written complaint of violation of the section and written and signed consent before instituting suit on the employee's behalf to enforce compliance with the section and collect moneys unlawfully withheld.

18. § 40-29 is repealed since economic and transportation conditions giving rise to the abuses of the company store have disappeared and are not likely to revive.

19. § 40-33. This section is rewritten so as to substitute the appropriate defined terms throughout. In substitution for language setting out specific requirements for seating facilities for females we recommend the requirement that suitable rest rooms or seating facilities be provided for female employees. This is to take care of the diversity of conditions and employments.

20. § 40-34. This section is amended to clarify the hours for which a female employee may be employed in a business establishment. The

present law states that no female shall be employed more than 9 hours in any one day of 24 hours without an unbroken rest period of 10 consecutive hours. This is changed for clarity to state that no such employee shall work more than 9 hours in any 24 consecutive hour period nor more than 48 hours in any period of 7 consecutive days. After an unbroken rest period of 10 hours between two tours of duty on intermittent schedules of work caused by the nature of the employment or after an unbroken rest period of 8 hours in connection with a shift change a female employee may work 7 days no more than 8 hours a day and not more often than every 14 days. Language is added to provide that a lapse of 24 hours or more or an unbroken rest period shall constitute the end of a work week. The resumption of work at the end of such period shall constitute the beginning of another 7 consecutive day period or part thereof.

21. § 40-35 is revised for clarity. It provides exceptions to the hours of work regulation contained in § 40-34. It is amended to include meat, clam and crab processors, and so as not to cover the restaurant operations of mercantile establishments in towns of less than 2,000 or in counties having a population of less than 50,000 inhabitants. This new county population limitation includes the large urban counties where conditions are similar to those found in cities but excludes the rural areas. Registered technicians and professional women are added to those excepted from § 40-34 as well as those employed in manufacturing establishments where the Commissioner finds that the hours limitation would unnecessarily hinder or restrict multiple shift operations and where the actual hours and period of work do not constitute a hazard to the health and welfare of the employees.

In the exception presently granted to women working in florist shops and greenhouses we recommend that the limitation be added that they may not exceed 10 hours in any 24 consecutive hour period. We would add a similar limitation to the exception presently allowed women employed for the developing and printing of amateur photographic film after holidays.

We recommend the granting of an exception for women employed in hotel dining rooms and food service establishments when the Commissioner finds that an emergency has occurred which in order to serve the public requires employees to exceed the number of hours fixed for employment. A record shall be kept by the employer whenever he operates under such an exception showing the beginning and ending time, date of operation, the basic hourly or weekly wage and the additional compensation paid or to be paid the employee. A copy of this information should be forwarded at the end of the work week to the Commissioner who may disallow the exemption for abuse or failure to comply. All of these changes are required for health and safety of employees or the nature of the employment, industrial processes and shift employment, and, in the case of restaurants by conventions and other large or unexpected crowds.

22. § 40-36 is amended to strike out references to repealed sections and to require the employer employing females to whom § 40-34 applies to record in his time book the date when each such employee begins her employment, the beginning and ending time of work each day, and the amount of time designated for a free from duty rest or meal period where such period is deductible from the daily schedule of work. This record must be kept on the premises for 12 months from the date of the

latest work period recorded. The section provides that the Commissioner provide copies of §§ 40-34 through 40-37 on the request of an employer. This section has also been amended to spell out more clearly the requirements for records of female employees' time to be kept in the time book or time cards previously required.

23. § 40-37 is amended to insert the defined terms where appropriate and to provide that the fine for violation of §§ 40-34 or 40-35 or 40-36 is raised from not less than \$10 or more than \$25 upon the first conviction to not less than \$25 or more than \$50 for the first offense and from not more than \$50 nor less than \$25 for the second to not less than \$50 or more than \$100. This is to make the statute fit present economic conditions and to gain better compliance with the law.

24. § 40-38 is repealed for its provisions are contained in §§ 40-4 and 40-36.

25. § 40-44. It is recommended that this section be rewritten so as to eliminate the detailed description for the prescribed maintenance of required toilet facilities and substitute for them the requirement that adequate and suitable toilet facilities shall be maintained in a clean and sanitary condition where four or more persons including males and females are employed. Separate toilet facilities would still be required. Where facilities are adjoining, a solid partition is required from floor to ceiling. In buildings occupied by two or more business establishments the section will be deemed complied with if separate toilet facilities are conveniently located in the building where the several establishments are located. This exception would take care of the office building. It appeared that an attempt to regulate facilities in establishments where less than four persons are employed would entail needless complication and expense. Common sense can take care of that situation.

26. § 40-44.1 is a new section requiring the Commissioner, when he finds that sanitary facilities constitute or create a health problem, to notify the State Health Commissioner. This will serve a useful purpose in bringing such situations to the attention of the Health Department.

27. § 40-45 is repealed since its provisions concerning how changes are to be made and expense borne where bad sanitary conditions exist will be covered in the new § 40-61.3.

28. § 40-46 is repealed since its provisions will be covered in § 40-61.3 and in § 40-44.1.

29. § 40-47 is repealed since the criminal prosecution for violation of §§ 40-44 and 40-45 will be covered in the new § 40-61.3.

30. § 40-48 is repealed as the discretionary features contained therein concerning the application of the four preceding sections will be contained in the new § 40-61.3.

31. § 40-49 is repealed as the enforcement provisions contained therein will be contained in the new § 40-61.3.

32. § 40-50 is repealed as ventilation generally will be covered in the new § 40-61.

33. § 40-51 is repealed as it deals with toilet and washrooms in foundrys and molding shops which is covered under § 40-44.

34. §§ 40-52, 40-53 and 40-54 are repealed because these sections have been preempted by § 27-65 to § 27-85 of the Code of Virginia dealing with fire safety.

35. § 40-54.1 is added requiring the Commissioner to notify the State Fire Marshal of any violation of the Virginia Fire Hazards Law or rules adopted thereunder coming to the Commissioner's attention.

36. § 40-55 is completely rewritten since the present law was enacted in 1914 and applies to machinery which is not generally utilized. We recommend a more general requirement that all dangerous or unsafe machinery, appliances, equipment, etc., shall be protected by adequate safety devices. We recommend further that the use of any machinery or a portion of a business in a dangerous or unsafe condition be prohibited.

37. § 40-56 is repealed since its provisions prohibiting the use of machinery in dangerous condition are included under the new § 40-61.3.

38. § 40-57 is repealed since the new definition section already excludes machinery operated on farms from coverage under Title 40.

39. § 40-58 is revised to eliminate detailed requirements for lighting. In the place of these, we recommend that business establishments be required to light their premises adequately and suitably. The Safety Codes Commission in the adoption of rules and regulations shall require the provision of such illumination as will insure compliance with this section and the standards shall be based on those recognized by authorities in the field of illumination and safety.

40. § 40-59 is repealed for it sets out the penalties for failure to comply with §§ 40-52, 40-53, 40-55, 40-56 and 40-58 all of which we have recommended for repeal. The penalties for violation of § 40-58 will be found in § 40-61.3 and it will also deal with the matters covered in the other sections.

41. § 40-60. This section has no relation to the Department of Labor and Industry but would appear to concern the State Corporation Commission. It is therefore our recommendation that this section be repealed and that its contents be set forth in the attached draft and studied by the Virginia Code Commission for possible reinsertion at a more appropriate point in the Code.

42. § 40-61 deals with protection from dust and refuse from machinery. In its present form it sets out detailed regulations concerning such protection. These detailed requirements are eliminated and in their place the requirement is inserted that every business establishment have reasonably adequate and suitable ventilation to remove and disperse excessive heat, steam, fumes, dust, or other impurities when required exposure of employees would be injurious to their health or safety. The Safety Codes Commission in the adoption of rules and regulations shall require such ventilation as will insure compliance with this section basing its rules and regulations upon standards promulgated by authorities in the field of ventilation and safety.

43. § 40-61.1 is a new section to provide that, when dust or refuse constitutes a substantial danger to operators or other employees, the machinery creating such dust or refuse shall be equipped with devices which will reasonably prevent or remove such dust or refuse.

44. § 40-61.2 is new and designed to protect workers in construction, maintenance, excavation and demolition work. It requires adequate and suitable safeguards as soon as danger exists to employees. The Safety Codes Commission is required to adopt rules and regulations designed to protect employees engaged in such work. These rules and regulations would be based upon recommendations of recognized bodies in such fields as well as generally recognized bodies in the field of safety.

45. § 40-61.3 provides the key working features of the Safety Codes Commission. Whenever the Commissioner finds that a business establishment or any of its components has violated §§ 40-44, 40-55, 40-58, 40-61, 40-61.1 or 40-61.2 or rules adopted under Title 40, he is required to give notice to the person in charge of the establishment. If such person objects to the findings of the Commissioner set forth in the notice, he may file a written objection with the Commissioner. The Commissioner shall refer this objection to the Safety Codes Commission. If the violation has not been corrected or appeal taken to the Safety Codes Commission within thirty days, the Commissioner may prohibit the use of the business establishment or machinery. Any person violating the sections listed above or rules or regulations adopted under these sections shall be guilty of a misdemeanor and fined for each violation. No fine, however, shall be imposed for an offense committed during the period permitted for filing objection or taking appeal. Prosecutions under this section will be in the county or municipal court of the county or city in which the violation occurs.

In addition to the procedure outlined above, the Commissioner is given the power, when he determines that there is an immediate danger of loss of life to an employee as a result of any violation, to order immediate compliance with his recommendation. His order may be appealed to the circuit or corporation court of the county or city wherein the violation exists. However, no stay should be allowed of the Commissioner's order unless the court for good cause shown issues a preliminary restraining order against enforcement of the Commissioner's order, pending final disposition of the appeal. Any person who violates any such order of the Commissioner shall be guilty of a misdemeanor whether the court find for him or against him. We recommend that violation of the Commissioner's order may be enjoined as a nuisance.

CONCLUSION

We believe that these recommendations will serve to protect employees, safeguard employers and strengthen our laws to meet changing business, industrial, commercial, economic and social conditions. We are convinced that there is great need for more flexible and responsive tools for safeguarding the safety and welfare of Virginia employees and for freeing Virginia employers from needless restrictions which hamper their ability to compete effectively with employers in other states.

Soundly conceived laws temperately applied, with judicial review when necessary are fundamental to our advance in the fields of business

and industry, with due regard to the safety, health and well-being of our citizens.

We express our appreciation to the Committee for the great amount of time and thought which they gave to the preparation of their report and acknowledge our indebtedness to them therefor.

Respectfully submitted,

ROBERT Y. BUTTON, Chairman

CHARLES K. HUTCHENS, Vice-Chairman

C. W. CLEATON

JOHN WARREN COOKE

JOHN H. DANIEL

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EDWARD E. WILLEY

STATEMENT OF EDWARD E. WILLEY

I have signed the report and approve its contents with the following exception: I feel that § 40-35, paragraph 4, is discriminatory. I reserve the right to propose amendments to this paragraph.

APPENDIX A

The following is an abbreviated summary of changes in labor laws as proposed by the Virginia Advisory Legislative Council Committee.

§ 40-1. **PRESENT LAW:** Provides for the Bureau of Labor and Industry and Commissioner of Labor within the Department of Labor and Industry.

Changes: Provides for a Department of Labor and Industry to be referred to throughout the title as The Department and confers on it responsibility for discharging the provisions of Titles 40 and 45.

References to Bureau of Labor and Industry and Commissioner of Labor are eliminated.

Reason: Conforms to present organization and nomenclature.

§ 40-1.1. **NEW SECTION:** Defines terms "Department", "employer", "employee", "business establishment", "female or woman", and "machinery", as used in Title 40.

Reason: Consistency and uniformity.

§ 40-1.2. **NEW SECTION:** Limits effect of provisions of Title 40 to providing for the safety, health and welfare of protected employees. Precludes right of action arising to third party as a result of breach of provisions of Title 40.

Reason: To prevent exploitation by third parties of features intended for the protection of employees.

§ 40-2. **PRESENT LAW:** Sets out duties of Bureau of Labor and Industry as to collection and publication in reports to the Governor of information and statistical details relating to departments of labor, penal institutions, industrial pursuits of the State, in relation to commercial, industrial, social, educational and sanitary conditions of the laboring classes and prosperity of productive industries.

Changes: Provides that statistics on safety of employees and information on all business and commercial institutions of the State be included in the reports.

Reason: To provide statistical information on safety, and to include commercial institutions or businesses as well as productive industries among those items reported upon.

§ 40-3. **PRESENT LAW:** Provides for appointment of Commissioner of Labor by Governor.

Change: Designates Commissioner as "Commissioner of Labor and Industry."

Reason: The term "Commissioner of Labor and Industry" is more in keeping with the duties of the office than the term "Commissioner of Labor". Its inclusion here will promote consistency with other statutes.

§ 40-4. **PRESENT LAW:** Provides for powers and duties of Commissioner to take and preserve testimony, enter public institutions and places of business and interrogate persons therein or take interrogatories.

It provides for his supervision and control of the Bureau of Labor and Industry. He is required to secure the enforcement of laws relating to businesses, to visit and inspect business establishments and make reports to the Governor annually concerning the work of his department and to enforce the provisions of Title 40.

Change: Terms brought up to date; Commissioner given power to make rules and regulations not inconsistent with the provisions of Titles 40 and 45 for the enforcement of those Titles, and to investigate all business establishments subject to provisions of Title 40.

Reason: Terminology standardized, Commissioner afforded more flexibility through power to make rules and regulations subject to Chapter 1.1 of Title 9. Commissioner given power to investigate as well as inspect business establishments, which broadens the authority of the Commissioner to examine closely specific situations.

§ 40-5. **PRESENT LAW:** Provides for prosecutions by Commonwealth's Attorneys on request of the Commissioner or his deputy of any violation of law which it is made the duty of the Commissioner to enforce.

Change: The term deputy is eliminated and assistants of the Commissioner must be authorized by the Commissioner to make request for prosecution. The violations prosecuted may be of law or rules or regulations adopted thereunder.

Reason: The power to request prosecution should be specifically delegated by the Commissioner. Enforcement of rules and regulations by Commonwealth's Attorneys is necessary in view of rule-making authority conferred by § 40-4.

§ 40-6. **PRESENT LAW:** Requires State and local officials to furnish statistical information in reference to labor to the Commissioner of Labor.

Change: Includes other information which will assist the Department in the discharge of its duties.

Reason: To facilitate work of department.

§ 40-7. **PRESENT LAW:** Provides for maintenance of Bureau of Labor and Industry and compensation of Commissioner and other persons in the Bureau of Labor and Industry.

Change: Bureau of Labor and Industry designated as "Department"; excess verbiage eliminated. Maintenance of Department and compensation of Commissioner and other employees provided for "in accordance with law".

Reason: Conformity with present practice and terminology.

§ 40-8. **PRESENT LAW:** Provides punishment for failure to give information legally requested by Commissioner and interference with performance of duty by Commissioner or his assistants.

Change: The defined term "business establishment" is inserted in lieu of named type of establishments. Investigation is included as one of the duties of the Commissioner which shall not be obstructed.

Reason: Conformity with rest of chapter.

§ 40-9. **PRESENT LAW:** Prohibits improper use of information or statistics by Commissioner or his employees.

Change: Defined terms inserted; provisions broadened to include Title 45 of the Code.

Reason: Conformity and inclusion of other title administered by Commissioner.

§§ 40-9.1, 40-9.2. NEW SECTIONS: Provide for licensing of employment agencies and define terms used in chapter.

Reason: To facilitate administration of law regulating employment agencies.

§ 40-10. PRESENT LAW: Requires employment agencies to keep records including age, sex, nativity, trade, occupation, name and address of applicants for employment and name and address of persons seeking employees along with the name and nature of employment for which help is wanted.

Change: Requires in addition, that information be kept on disposition of applications and that all records be kept for a period of three years subject to review by the Commissioner or his assistants.

Reason: To facilitate supervision of employment agencies.

§ 40-11. PRESENT LAW: Requires registers to be open for inspection.

Change: Language conformed to other changes.

Reason: Conformity with rest of chapter.

§ 40-12. PRESENT LAW: Limits registration fees to \$3 and requires receipt.

Change: Requires return of registration fee after 30 days if suitable employment not offered.

Reason: Protection of persons seeking employment.

§ 40-17. PRESENT LAW: Requires Commissioner to enforce Chapter. Allows him to make rules for enforcement not inconsistent with Chapter.

Change: Repealed.

Reason: Covered in § 40-4.

§ 40-18. PRESENT LAW: Provides fine of \$10 to \$200 for violation of statutes relating to employment agencies.

Change: Minimum fine increased to \$25.

Reason: More effective enforcement.

§ 40-20. PRESENT LAW: Establishes Safety Codes Commission consisting of Commissioner of Labor, State Health Commissioner, and Employer Representative on Industrial Commission; requires Commission to investigate safety in industry and make recommendations to General Assembly.

Change: Provides for Safety Codes Commission consisting of Commissioner of Labor and four appointed members; directs Commission to investigate safety in business establishments; provides for appeals from Commissioner of Labor's rulings to Safety Codes Commission; authorizes Commission to adopt rules and regulations relating to safety and health of employees in business establishments.

Reason: To provide for assistance to the Commissioner in enforcement of labor laws and for appeals from his action to an administrative agency with representatives of employers, employees and the public.

§ 40-21. PRESENT LAW: Provides for cooperation of Department of Labor in the enforcement of the Fair Labor Standards Act and allows it to accept payment or reimbursement for its service as provided by such act. Any agreement reached thereunder is subject to the approval of the Director of the Division of the Budget. Section not to be construed

as authorizing the Department to spend in excess of its appropriations except where reimbursed by the United States.

Change: Amendments to the Fair Labor Standards Act included.
Reason: To bring statute down to date.

§ 40-22.1. PRESENT LAW: Prohibits requiring employees or applicants for employment to pay cost of medical examinations.

Change: Surplus language, defining "employer" and "employee" eliminated.
Reason: Conformity with rest of the title.

§ 40-23. PRESENT LAW: List certain employers required to conform to provisions of Article 2, Chapter 3 of Title 40 as to method of payment of wages.

Change: Repealed.
Reason: Incorporated in § 40-24.

§ 40-24. PRESENT LAW: Requires, generally, payment of wages at least twice a month in lawful money of the United States, by check or by cash order. Semi-monthly payment requirement shall not apply to excelsior or saw mills; these employees must be paid at least once each month.

Change: Revised to require regular pay periods, payment of salaried employees at least monthly and hourly employees at least once every two weeks and of all wages or salaries due on termination of employment; prohibits withholding except in accordance with law; provides penalties; and permits Commissioner to institute proceedings to collect wages unlawfully withheld. Payment of wages or salaries to be in lawful money of the United States or check payable at face value upon demand in lawful money of the United States. Violation carries fine of not less than \$25 nor more than \$100.

Reason: Better protection of employees and more concise arrangement of the title.

§ 40-25. Requires receipts to be given by employers to employees showing the amount and purpose of any deductions made from wages.

Change: Repealed.
Reason: Covered in § 40-24.

§ 40-26. PRESENT LAW: Orders for payment of compensation to be redeemable in lawful money of the United States.

Change: Repealed.
Reason: Covered in § 40-24.

§ 40-27. Provides for payment of script redeemable in merchandise upon request of an employee for advance payment of compensation. Unused script to be redeemable in lawful money if presented no later than one month after settlement date.

Change: Repealed.
Reason: Provisions as to script are obsolete.

§ 40-28. Provides penalty for issuance of script in violation of §§ 40-26 and 40-27. Sets penalty limit of \$100.

Change: Repealed.
Reason: Provisions as to method of payment covered in § 40-24; provisions as to script are obsolete.

§ 40-29. **PRESENT LAW:** Prohibits selling merchandise by certain employers to employees at excessive profit.

Change: Repealed.

Reason: Conditions giving rise to the abuse of the company store have disappeared and are not likely to recur.

§ 40-33. **PRESENT LAW:** Requires employers to provide one seat for every three female employees; permits a substitution of rest room facilities when female employees must stand while working.

Change: Requires suitable rest rooms or sitting facilities and that female employees be permitted to use same at reasonable times.

Reason: Makes law more flexible to meet varied working conditions.

§ 40-34. **PRESENT LAW:** Prohibits employment of females more than 9 hours in a 24 hour day without an unbroken rest period of 10 hours, or more than 48 hours a week. All contracts providing for more hours than this deemed void. An employee may work during certain shift changes with a rest period of only 8 hours or be employed for 7 consecutive days under certain conditions.

Change: Imposes 9 hour limit during any 24 consecutive hours and 48 hour limit during any 7 consecutive days; exception broadened to include two tours of duty on intermittent schedules after a ten hour rest period; lapse of 24 hours or more of unbroken rest constitutes end of a work period and marks beginning of another 7 consecutive day period.

Reason: Clarification of present statute.

§ 40-35. **PRESENT LAW:** Provides exceptions from statute regulating hours of work of females. The exceptions apply to bookkeepers, stenographers, cashiers, office assistants, buyers, managers, assistant managers, office executives, fruit and vegetable processing factory workers during rush seasons, tobacco, peanut and oyster and poultry workers, mercantile establishment employees when located in towns of less than 2,000 inhabitants or country districts, hospital employees in emergency situations, employees of florist shops, greenhouses on certain holiday occasions, also women employed in the processing of film on certain dates.

Change: Fixes limit of 60 work hours in 7 consecutive days in connection with processing tobacco, peanuts, seafood and poultry and includes processing of meat; restaurant operations in mercantile establishments in rural and small town areas brought within coverage of limiting statute. Registered technicians or practitioners of professions exempted. Commissioner given discretion to establish exemptions where necessary in connection with multiple shift operations or emergency conditions in food service establishments.

Reason: To meet the conditions peculiar to certain employment operations while still protecting health and safety of employees. The limit is placed on the number of hours that can be worked in a 7 consecutive day period in order to protect employees.

§ 40-36. **PRESENT LAW:** Requires posting of sections regulating hours of work of women and keeping of appropriate records showing names of employees and hours worked. Records to be preserved one year.

Change: More detailed records required to be maintained; records to be kept for 12 months; Commissioner to furnish copies of §§ 40-34 to 40-37 on request of employer.

Reason: Clarification of requirements and facilitation of administration.

§ 40-37. **PRESENT LAW:** Provides penalties for violation of statutes regulating hours of work of women of not less than \$10 nor more than

\$25 for first conviction and not less than \$25 nor more than \$50 for second and subsequent convictions.

Change: Minimum and maximum penalties increased to \$25 and \$50 for first conviction and \$50 and \$100 for second or subsequent convictions.

Reason: To secure better compliance with law.

§ 40-38. **PRESENT LAW:** Charges Commissioner with enforcement of §§ 40-34, 40-35, and 40-36 and requires that he supply printed copies of these sections to employers upon application.

Change: Repealed.

Reason: Provisions included in other sections.

§ 40-44. **PRESENT LAW:** Prescribes detailed specifications for toilet facilities in business establishments with 5 or more employees or 2 or more women or children under 18; requires separate facilities where males and females are employed together. No person is allowed to use toilet facilities provided for the other sex. The regulations set out do not apply to office buildings if separate toilets are within convenient access in the building where the offices are located.

Change: Requires adequate and suitable toilet facilities in all business establishments; separate facilities required where four or more persons including male and female are employed; requirements satisfied by conveniently located facilities in buildings housing more than one business establishment.

Reason: Provides flexibility to meet varying conditions.

§ 40-44.1. **NEW SECTION:** Requires notification of State Health Commissioner of health problems created by toilet facilities.

Reason: Permits handling of health problems by Health authorities.

§§ 40-45 thru 40-49. **PRESENT LAW:** These sections prescribe detailed procedure for remedying conditions in connection with sanitary facilities. § 40-45 sets out who is to make required changes and how the expense is to be borne. § 40-46 prescribes conditions requiring Commissioner of Labor to give notice to health authorities and requires that health authorities make inquiries upon notice by Commissioner of Labor and to enforce laws relating thereto. § 40-47 sets out the conditions which must exist prior to criminal prosecution for violation of the provisions of §§ 40-44 and 40-45. § 40-48 gives the Commissioner discretion as to the application of §§ 40-44, 40-45, 40-46 and 40-47 in stores and office buildings in cities and towns of 5,000 or less. § 40-49 sets out penalties for a violation of § 40-44 thru § 40-48.

Change: Repealed.

Reason: Covered by new §§ 40-44.1, 40-61.3.

§§ 40-50, 40-51. **PRESENT LAW:** Regulates ventilation and sanitary facilities in foundries and moulding shops generally. § 40-50 sets out in detail the ventilation required for foundries and moulding shops and requires that upon notification of a deficiency remedial action must be taken within 30 days. Failure to take such action deemed a misdemeanor carrying a fine of \$10 for each day of operation until proper ventilation is provided. § 40-51 sets out toilet and washroom requirements for foundries and moulding shops and requires compliance with the provisions and provides that failure to comply constitutes a misdemeanor carrying

a penalty of \$10 for each day of noncompliance after 30 days from date of notification by Commissioner.

Change: Repealed.

Reason: Covered by §§ 40-44, 40-61.

§§ 40-52, 40-53 and 40-54. **PRESENT LAW:** These sections regulate doors and stairways in factories, shops and manufacturing establishments. § 40-52 sets out requirements for handrails and requires that stairways be screened at the sides and bottoms where females are employed. § 40-53 requires doors to open outwardly and not to be locked during working hours. § 40-54 sets out that the preceding two sections are not applicable where not more than 25 persons are employed or where sliding doors are used in the discretion of the Commissioner.

Change: Repealed.

Reason: Superseded by Virginia Fire Hazards Law.

§ 40-54.1. **NEW SECTION:** Requires Commissioner to notify State Fire Marshal of violation of fire hazards law or regulations.

Reason: Permits department to assist State Fire Marshal in enforcement.

§ 40-55. **PRESENT LAW:** Sets forth detailed requirement for safety appliances for machinery such as belt shifters where pulleys are used, proper guarding for pits, floor openings, etc. Requires that no persons remove the safeguards from machinery, except for maintenance.

Change: Requires adequate safety devices for machinery, appliances, equipment.

Reason: Eliminates obsolete requirements; provides for general regulation of safety devices.

§ 40-58. **PRESENT LAW:** Requires lights in workrooms, halls and stairs of business establishments when Commissioner of Labor deems it necessary and requires lighting to be independent of the motive power of the factory.

Change: Empowers Safety Codes Commission to adopt rules and regulations based on recognized standards of lighting.

Reason: Permits fixing standards based on modern conditions.

§ 40-59. **PRESENT LAW:** Provides penalties for violation of §§ 40-52, 40-53, 40-55, 40-56 and 40-58 relating to safety provisions. Fines of not less than \$5 nor more than \$10 for each day's failure to comply provided.

Change: Repealed.

Reason: Covered in § 40-61.3.

§ 40-60. **PRESENT LAW:** Permits State Corporation Commission to require sheds for employees engaged in railroad car construction work.

Change: Repealed. Recommended to be considered for insertion in a more appropriate place in the Code since it relates to the State Corporation Commission rather than the Department of Labor and Industry.

Reason: Section not pertinent to labor laws.

§ 40-61. **PRESENT LAW:** Sets out detailed provisions for protection from dust and refuse from machinery. Makes violation of section a misdemeanor with punishment by fine of not less than \$25 nor more than

\$50 for the first offense and \$50 but not more than \$100 for each subsequent offense.

Change: Requires ventilation to remove and disperse excessive heat, steam, gases, vapors, fumes, dust and other impurities injurious to health or safety of employees; empowers Safety Codes Commission to make rules and regulations.

Reason: Provides wider coverage and more adequate protection of employees.

§ 40-61.1. NEW SECTION: Requires equipping machinery which produces dust or refuse with devices to prevent or remove the same.

Reason: Sets specific requirement for protective devices against dust and refuse.

§ 40-61.2. NEW SECTION: Provides for protection of persons engaged in construction, maintenance, excavation and demolition work when danger exists; authorizes regulations by Safety Codes Commission.

Reason: Affords protection to employees in dangerous occupations not now covered by statutes.

§ 40-61.3. NEW SECTION: Prescribes detailed procedure for enforcement of safety provisions; requires notice by Commissioner of nature of violations; provides for appeals to Safety Codes Commission; authorizes Commissioner to issue order prohibiting use of business establishments or machinery unless violations corrected or appeal taken; prescribes penalties for violations; authorizes Commissioner to issue orders requiring immediate compliance in emergency situations with appeal to courts and issuance of restraining order by court in its discretion; allows Commissioner to seek injunctions to restrain violations.

Reason: To expedite and facilitate enforcement of law for adequate protection to employers.

APPENDIX B

A BILL to amend and reenact §§ 40-1 through 40-12, 40-18, 40-20, 40-21, 22.1, 40-24, 40-33 through 40-37, 40-44, 40-55, 40-58 and 40-61 as severally amended, of the Code of Virginia and to further amend the Code of Virginia by adding to Title 40 new sections numbered 40-1.1, 40-1.2, 40-9.1, 40-9.2, 40-44.1, 40-54.1, 40-61.1, 40-61.2 and 40-61.3 all of which sections relate to the Department and Bureau of Labor and Industry, definition of terms, limitation of rights under Title 40, Commissioner of Labor and Industry, his powers and duties, information to be supplied, use thereof, employment agencies, licensing thereof, records, registration, penalties, Safety Codes Commission, enforcement of Fair Labor Standards Act, protection of employees, as to medical examinations, payment of wages, deductions, seating of females, hours of work of females, toilet facilities, notice to Health Commissioner, ventilation, fire hazards, notification of Fire Marshal, safety devices, lighting, dust, safety precautions in connection with construction, maintenance, excavation and demolition, enforcement of safety provisions by Commissioner, appeals, and to repeal §§ 40-17, 40-23, 40-25 through 40-29, 40-38, 40-45 through 40-54, 40-59 and 40-60 relating generally to the same matters.

Be it enacted by the General Assembly of Virginia:

1. That §§ 40-1 through 40-12, 40-18, 40-20, 40-21, 40-22.1, 40-24, 40-33 through 40-37, 40-44, 40-55, 40-58 and 40-61 as severally amended, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding new sections numbered 40-1.1, 40-1.2, 40-9.1, 40-9.2, 40-44.1, 40-54.1, 40-61.1, 40-61.2 and 40-61.3, the amended and new sections being as follows:

§ 40-1. * *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 and Title 45. 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.*

§ 40-1.1. *As used in this Title, unless the context clearly requires otherwise—the following terms have the following meanings:*

- (1) *“Department” means the Department of Labor and Industry.*
- (2) *“Commissioner” means the Commissioner of Labor and Industry.*
- (3) *“Employer” means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within the State who employs another to work for wages, salaries, or on commission.*
- (4) *“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.*
- (5) *“Business establishment” means any public institution owned or operated by the State or by a local government, or otherwise owned or operated, or any other place where people are employed, permitted or suffered to work, but shall not include agricultural employment on a farm.*

(6) "Female" or "woman" means a female eighteen years of age or over.

(7) "Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors, shafts, tunnels, but not including machinery being operated on farms in connection with the production or harvesting of agricultural products.

§ 40-1.2. 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.

§ 40-2. The * Department shall collect, * sort, systematize and present in annual reports to the Governor, to be biennially transmitted by him to the General Assembly, statistical details relating to * the Department, penal institutions, and industrial pursuits in the State, * particularly in their relation to the commercial, industrial, social, educational, safety and sanitary conditions of * employees and to the permanent prosperity of the productive industries and other business and commercial institutions of the State.

§ 40-3. The Governor shall appoint, by and with the consent of the Senate, some suitable person identified with the labor interests of the State, 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.

§ 40-4. The Commissioner * shall : (1) have general supervision and control of the * Department.

(2) Enforce the provisions of * Titles 40 and 45 and shall prosecute all violations of law relating to the * business establishments before any * court of competent jurisdiction.

(3) Make such rules and regulations not inconsistent with the provisions of these Titles as may be necessary for the enforcement of Titles 40 and 45; all such rules and regulations shall be subject to Chapter 1.1 of Title 9.

(4) In the discharge of his duties, have power to take and preserve testimony, examine witnesses and administer oaths. * He may, under proper restrictions enter any * business establishment, and interrogate any person employed therein or connected therewith or the proper officer of * any employer in the Commonwealth, or file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt of such list of questions.

(5) Have power to appoint such * representatives and investigators to aid him in this work and other assistants as may be necessary; their duties * shall be prescribed by the Commissioner. The Commissioner or his assistants * shall visit and inspect or investigate at reasonable hours, as often as practicable, the * business establishments in the State.

(6) * Report in writing to the Governor annually concerning the work of * the Department, with such * information and * recommendations as he may deem proper.

§ 40-5. The Commonwealth's attorney of the proper county or city, upon the request of the Commissioner, * or any of his *authorized* assistants, * shall prosecute any violation of law *or rule or regulation adopted thereunder* which it is made the duty of the Commissioner * to enforce.

§ 40-6. 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 *which will assist the Department in the discharge of its duties*.

§ 40-7. 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*.

§ 40-8. 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 § 40-4, 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 assistants, * he shall be guilty of a misdemeanor. * *Such person*, upon conviction thereof, shall be fined not exceeding one hundred nor less than twenty-five dollars, or imprisoned in jail not exceeding ninety days, or both.

§ 40-9. * *Neither* the Commissioner * *nor* any employee of the * *Department* shall make use of any information or statistics gathered from any person, company or corporation for any purposes other than those of this title *or of Title 45*.

CHAPTER 2

EMPLOYMENT AGENCIES

§ 40-9.1. *The other definitions of this Title shall apply in this Chapter but herein, and for the purposes of this Chapter only, the following definitions shall also apply:*

(1) "*Fee*" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from or on behalf of any person seeking employment or employees in payment for any service, either directly or indirectly.

(2) "*Employer*" means any person employing or seeking to employ any employee.

(3) "*Employee*" means any person performing or seeking to perform work or service of any kind for hire.

(4) "*Employment Agency*" means any person, firm, corporation, association or business who shall advertise through any means for the purpose of assigning or directing a person to some other employer to work and charges any fee or commission for such service; provided that this chapter shall not apply to migratory farm labor where otherwise provided for by law.

§ 40-9.2. No person shall operate any employment agency within this State on and after July one, nineteen hundred sixty-two, without first obtaining a license so to do from the Department, which license shall be valid until January one, nineteen hundred sixty-three. Thereafter licenses shall be obtained within thirty days after the first day of January of each year. A person who desires to commence operation of an employment agency after January thirty-first shall obtain a license for the remainder of the year before engaging therein. All licenses shall expire at the end of the calendar year for which issued. A separate license shall be procured for each location at which business is conducted. No license shall be transferable. Each application for a license shall be submitted to the Department together with cash, or a post office money order, or a certified check drawn in favor of the State Treasurer, in the amount of ten dollars. The Commissioner may, by rule or regulation, require the furnishing of such information by the applicant as will enable the Commissioner to determine whether the applicant for licensure is qualified to comply with the requirements of this chapter.

§ 40-10. Every * employment agency shall keep a register in a substantial book, in the form prescribed by the Commissioner, * in which shall be entered the age, sex, nativity, trade or occupation, name and address of every applicant for employment. Such * employment agency shall also enter in a like register the name and address of every person who * makes application for help, employees or servants and the name and nature of employment for which * same are wanted. The disposition of every such application shall be entered on the appropriate register. All such records shall be kept on file, for a period of three years subject to review by the Commissioner or his assistants.

§ 40-11. The registers required by § 40-10 shall be open at all reasonable hours to the inspection and examination of the Commissioner * or his * assistants.

§ 40-12. When an employment agency charges a registration fee, * such fee shall in no case exceed the sum of three dollars, for which a receipt shall be given; * the receipt shall * state the name and address of the applicant, the amount of the fee, the date and name or character of the work or the situation to be secured. The registration fee shall be returned to the applicant after thirty days if suitable employment is not offered by such employment agency to him.

§ 40-18. Any person found guilty of a violation of any of the provisions of this chapter shall, subject to the provisions of * § 40-19, be guilty of a misdemeanor; * upon conviction in any court of competent jurisdiction he shall be fined not less than * twenty-five nor more than two hundred dollars for each offense.

§ 40-20. (1) The Safety Codes Commission is hereby continued as an agency of the Commonwealth. The Commission shall consist of * five members, four of whom shall be appointed by the Governor. One member shall, by reason of previous vocation, employment or affiliation, be so chosen as to represent Labor; two shall, by reason of previous vocation, employment or affiliation, be so chosen as to represent employers; one shall be chosen from and be a representative of the general public; and the Commissioner of Labor and Industry shall 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. Succeeding appointments shall be for terms of four years each but other vacancies shall be filled by appointment for the unexpired term.

(3) The Commission shall annually select a chairman from its members. The Commission shall meet at least once every six months; * other meetings may be held * upon call of the chairman or * any * three members of the Commission. * Three members of the Commission shall constitute a quorum. *The appointive members of the Commission shall receive a per diem of fifteen dollars for each day or portion thereof on which they are engaged upon the business of the Commission. All members shall receive their necessary expenses incurred in attendance upon meetings or otherwise incurred in the performance of their duties.*

(4) The Commission shall study and investigate all phases of safety in * business establishments, the application of this Title and of Title 45 thereto, and shall serve as advisor to the Commissioner. *The Commission shall hear appeals arising under § 40-61.3. The findings of the Commission concerning the enforcement of §§ 40-44, 40-45, 40-55, 40-58, 40-61, 40-61.1, 40-61.2 and 40-61.3 or violations thereof shall be binding upon the Commissioner.*

(5) *The Commission, 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. The Commissioner shall enforce such rules and regulations. All such rules and regulations shall be designed to protect and promote the safety of such employees but shall not be in conflict with any provisions of this Title.*

(6) *Chapter 1.1 of Title 9 of the Code shall apply to the adoption of rules and regulations under this section and to proceedings before the Commission.*

§ 40-21. The Department * may enter into agreements with the Wage and Hour Division, and the Children's Bureau, United States Department of Labor, for assistance and cooperation in the enforcement within this State of the act of Congress known as the Fair Labor Standards Act of one thousand nine hundred and thirty-eight, approved June twenty-fifth, one thousand nine hundred and thirty-eight, *and amendments thereto* and may accept payment or reimbursement for its service as provided by such act of Congress. Any such agreement may be subject to the regulations of the Administrator of the Wage and Hour Division, or the Chief of the Children's Bureau of the United States Department of Labor, as the case may be, and shall be subject to the approval of the Director of the Division of the Budget. Nothing in this section shall be construed as authorizing the Department * to spend in excess of its appropriations from State funds, except to the extent that such excess may be paid or reimbursed to it by the United States Department of Labor. All payments received by the Department * under this section shall be deposited in the State treasury and are hereby appropriated to the Department * to enable it to carry out the agreements entered into under this section.

§ 40-22.1. 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 * this section shall be * fined not more than one hundred dollars for each * such violation.

§ 40-24. * (a) All employers engaged in the operation of any business establishment shall establish regular pay periods and shall pay salaried employees at least once each month and employees paid on an hourly rate at least once every two weeks. 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 in lawful money of the United States * or check payable at face value upon demand in lawful money of the United States.

(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. An employer, upon request of his employee shall furnish the latter 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) An employer who violates this section shall be fined not less than twenty-five dollars nor more than one hundred dollars.

(e) 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 which shall be paid to the employee entitled thereto.

§ 40-33. * In any * business establishment where it is necessary on account of the nature of the work in such establishment for the female employees to stand while working, * suitable rest rooms or seating facilities shall be provided and such employees shall be permitted to use same at all reasonable times. Any person who violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding twenty-five dollars and cost.

§ 40-34. No female shall be employed, suffered or permitted to work in any * business establishment in this State, except as provided in § 40-35, for more than nine hours in any * twenty-four consecutive hour period nor more than forty-eight hours in any * period of seven consecutive days.*

Nothing in this section shall be construed to prohibit an employee from working after an unbroken rest period of ten hours between two tours of duty on intermittent schedules of work caused by the nature of the employment, or after an unbroken rest period of eight hours in connection with shift changes, occurring not oftener than once in any * week, nor shall this section prohibit an employee in a manufacturing establishment from working seven consecutive days with the employee limited to eight hours of work on each of such * consecutive days with such seven consecutive day period occurring not oftener than once in fourteen consecutive days, in connection with a rotating shift schedule used in a manufacturing establishment which operates twenty-four hours each day continuously.

A lapse of twenty-four hours or more on an unbroken rest period shall constitute the end of a work period; the resumption of work at the end of such period shall constitute the beginning of another seven consecutive day period or part thereof.

§ 40-35. Nothing in the preceding section shall be construed to apply to females whose full time is *devoted to employment or employed*:

(1) as bookkeepers, stenographers, cashiers or office assistants, buyers, managers or assistant managers and office executives,

(2) in factories engaged exclusively in canning, processing or packing fruits or vegetables during the fruit * or vegetable seasons,

(3) in the handling or redrying of leaf tobacco during the tobacco market seasons, or in shelling or cleaning of peanuts or in shucking and packing oysters *and clams, and picking and packing crab meat*, or in the dressing or processing of poultry *or meat*, provided such females are not employed more than ten hours in any one * *period* of twenty-four consecutive hours, * *or not more than ninety days in any one calendar year, and not more than sixty hours in any seven consecutive day period*,

(4) in mercantile establishments, *exclusive of their restaurant operations or department*, * in towns of less than two thousand * or in counties having a population of less than fifty-thousand inhabitants,

(5) in any hospital, whenever an emergency situation exists, whereby strict compliance with this article might reasonably be calculated to jeopardize the lives or health of persons relying upon such hospital for care or treatment,

(6) *as qualified, registered technicians or as the practitioner of a profession regulated by the State*,

(7) *in any manufacturing establishments where the Commissioner finds that the limitations of § 40-34 would unnecessarily hinder or restrict multiple shift operations and where the actual hours and period of work do not constitute a hazard to the health and welfare of the employees*,

(8) * in florist shops and greenhouses * for as many as, but not in excess of, ten hours in * *any twenty-four consecutive hour period* for * three days preceding and on February fourteenth, December twenty-fifth, Easter Sunday and Mothers' Day, * *or*

(9) in * *developing * or printing of amateur photographic film * for as many as, but not in excess of, ten hours in * any twenty-four consecutive hour period*, for three working days following December twenty-fifth, January one, Easter Sunday, July fourth and Labor Day.

(10) *in hotel dining rooms and other food service establishments, whose principal business is preparing and serving food for on premises consumption, the Commissioner may grant in advance or approve thereafter exemptions in specific cases when he finds that an emergency has occurred or does exist which, in order to serve the public, due to the presence of an unusually large or unexpected number of patrons, requires employees to exceed the number of hours fixed for employment for any one day or for any one week. A record shall be kept by the employer whenever he operates under any such exemption, which records shall show the beginning and ending times and date of such operation, the basic hourly or weekly wage of such employees and the additional compensation paid, or to be paid, for such additional hours; and such employer requesting the exemption shall send a copy thereof at the end of the work week to the Commissioner.*

§ 40-36. Every employer employing females to whom § 40-34 * shall apply shall post in a place accessible to his employees a printed or type-written copy of * sections 40-34 through 40-37 and shall keep a time book or time cards or other appropriate records showing the names and addresses of his female employees to whom § 40-34 is applicable, * and the date when each such female employee began her employment. Such records shall show the beginning and ending times of work each day together with the amount of time designated for a free from duty rest or meal period, which period is deductible from the daily schedule of hours of work. The record for each employee shall be kept on the premises for a period of twelve months from the date of the latest work period recorded for the female employee involved.

The Commissioner shall furnish copies of §§ 40-34 through 40-37 on request of an employer.

§ 40-37. Any person having authority to contract for the employment of persons to work * for any business establishment who shall engage or contract with any female, or suffer or permit any female to work in any * such establishment in violation of § 40-34, or who shall violate § 40-35 or § 40-36, shall be guilty of a misdemeanor; upon conviction he may be fined not less than * twenty-five nor more than * fifty dollars * for the first offense and not less than * fifty dollars nor more than * one hundred dollars upon the second or subsequent offense.

§ 40-44. * Every business establishment * shall * provide adequate and suitable toilet facilities for the use of employees which shall be maintained in a clean and sanitary condition. Where four or more persons including both males and females are employed, there shall be separate facilities with separate entrances for each sex, plainly designated, and no person shall be allowed to use * the facilities provided for persons of the other sex. Where such separate facilities are adjoining, there shall be a solid partition extending from floor to ceiling.

In buildings * occupied by two or more business establishments, the provisions of this section shall * be deemed complied with if separate toilet * facilities are conveniently located in the buildings wherein the * business establishments are located.

§ 40-44.1. If it shall appear to the Commissioner that the sanitary facilities in any business establishment constitute or create a problem of health, he shall so notify the State Health Commissioner.

§ 40-54.1. The Commissioner shall notify the State Fire Marshal of any violation of the Virginia Fire Hazards Law or of rules and regulations adopted thereunder coming to his attention.

§ 40-55. * All dangerous or unsafe machinery, appliances, equipment and portions of any business establishment shall be protected by adequate safety devices and the use of any machinery, appliances, equipment and portions of a business establishment in a dangerous or unsafe condition or not so protected is prohibited.

§ 40-58. * Work rooms, halls and stairs * in any business establishment shall be adequately and suitably lighted. The Safety Codes Commission, in adoption of rules and regulations authorized by this Chapter, shall specifically require the provision of such illumination as will insure compliance with this section and the standards shall be based on those of recognized authorities in such field.

§ 40-61. * Every business establishment shall have reasonably adequate and suitable ventilation so as to remove and disperse insofar as reasonably practical, excessive heat, steam gases, vapors, fumes, dust or other impurities where the required exposure of employees would be injurious to their health or safety. The Safety Codes Commission, in the adoption of rules and regulations authorized by this Chapter, shall specifically require the provision of such ventilation as will insure compliance with this section; it may base such rules and regulations upon the standards promulgated by recognized authorities in such field. In the determination of what is reasonable under this section, the nature of the employment or of the processes employed shall be controlling.

§ 40-61.1. When, in the operation of machinery in any business establishment, dust or refuse results therefrom whether from the machinery, the process, or the materials employed therein, and which constitutes a substantial danger to the operators or other employees working near such machinery, then such machinery shall be equipped with such devices as will reasonably prevent or remove such dust or refuse.

§ 40-61.2. In construction, maintenance, excavation and demolition work, adequate and suitable shoring and other safeguards shall be used whenever such work has progressed to the degree that danger to the employees may exist. The Safety Codes Commission, in the adoption of rules and regulations under this Title, shall adopt such reasonable rules and regulations, as are designed to protect the safety of the employees engaged therein. Such rules and regulations may be based upon the recommendations of recognized bodies in the fields of construction, excavation and demolition, and generally recognized bodies in the field of safety which have promulgated standards for the protection of employees in such cases.

§ 40-61.3. (1) Whenever the Commissioner finds that any business establishment or machinery therein violates §§ 40-44, 40-55, 40-58, 40-61, 40-61.1, 40-61.2, or rules and regulations adopted under this Title, he shall give notice thereof to the owner or manager or other person in charge of such establishment; if such notice is given to a person other than the owner then a copy thereof shall be sent to the owner by certified or registered mail to his last known post office address. The notice shall set forth with reasonable particularity the nature of the violation and the recommendations of the Commissioner with respect to its correction. The notice may be delivered in person or mailed or it may be served in accordance with Chapter 4 of Title 8.

(2) If the person charged with the violation objects to the findings or recommendations of the Commissioner set forth in the notice he may file written objection thereto with the Commissioner within thirty days from the date the notice of the Commissioner is delivered to, mailed or served upon the person so charged. Upon the filing of such objections the Commissioner shall forthwith refer them to the Safety Codes Commission.

(3) Unless the violation has been corrected or an appeal has been taken to the Safety Codes Commission within thirty days of the notice given under paragraph (1), the Commissioner may prohibit the use of the business establishment or machinery until the violation has been corrected or ended.

(4) Any person found in violation of the sections listed in paragraph (1) or such rules and regulations shall be guilty of a misdemeanor and

upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars and each day of violation shall constitute a separate offense; provided that no such fine shall be imposed for any such offense committed during any period permitted by this Title for the filing of objections or the taking of an appeal to the Safety Codes Commission from the findings or recommendations of the Commissioner. Prosecutions under this section shall be in the county or municipal court of the county or city in which the violation occurred.

(5) Notwithstanding any other provision of this section, whenever the Commissioner determines that there is immediate danger of loss of life to any employee as a result of any such violation, he may order immediate compliance or prohibit the use of the machinery or business establishment. Such order may be appealed to the circuit or corporation court of the county or city wherein the alleged violation exists but there shall be no stay of the Commissioner's order, unless such court, for good cause shown, issue a preliminary restraining order against the enforcement of the Commissioner's order pending final disposition of appeal from the Commissioner's order. Any person who violates any such order of the Commissioner prior to entry of a restraining order granted by the court shall be guilty of a misdemeanor irrespective of the court's findings and the violation shall be subject to being enjoined as a nuisance.

2. That §§ 40-17, 40-23, 40-25 through 40-29, 40-38, 40-45 through 40-54, 40-59 and 40-60 and all amendments thereof, of the Code of Virginia, are repealed.

APPENDIX C

FOR CONSIDERATION BY CODE COMMISSION

A BILL to amend the Code of Virginia by adding a new section numbered 56-419.1 relating to sheds for employees engaged in car construction work.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 56-419.1 as follows:

§ 56-419.1. The State Corporation Commission may in its discretion after due hearings require persons, firms, corporations or receivers thereof employing men in the construction of heavy repair of railroad cars or car trucks or similar equipment to erect and maintain buildings or sheds for the protection of men employed in such repair or construction work from inclement weather and may promulgate and enforce rules, regulations and orders concerning such work and the size and construction of such buildings or sheds, and for the regulation of the work to be done under such buildings or sheds, to the end that men so employed may have so much protection as can reasonably be afforded, without an unreasonable interference with the work or system of the institution where such work is being done.

The State Corporation Commission may enforce any such order by a fine not exceeding twenty-five dollars per day for each day that any such employer shall fail to comply therewith. Such fine shall be collected by the Commission, by its process.

Should the State Corporation Commission decide that the sheds should be built they shall not require exceeding ten per centum to be built in any one year.

