

**REVISION OF TITLE 40 OF THE CODE OF VIRGINIA**

**REPORT OF THE  
VIRGINIA CODE COMMISSION**

**To**

**THE GOVERNOR**

**And**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 4**

COMMONWEALTH OF VIRGINIA  
*Department of Purchases and Supply*  
Richmond  
1969



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REVISION OF TITLE 40 OF THE CODE OF VIRGINIA

REPORT OF THE  
VIRGINIA CODE COMMISSION

TO

THE GOVERNOR AND THE GENERAL ASSEMBLY  
OF VIRGINIA

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, August 15, 1969

The General Assembly at its Regular Session of 1968 directed the Virginia Code Commission, by Chapter 679 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 40, relating to "Labor and Employment."

Extracts from Chapter 679 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions should be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 27, 33, 34, 35, 36, 40, 41, 42, 43 and 53 of the Code of Virginia and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-nine, a report of its recommendations, together with suggestive legislation necessary to carry such recommendations into effect. No substantive change shall be incorporated in such revisions, however, the Commission may suggest substantive change in each title being revised and submit separately legislation purposed to carry out each such recommendation."

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as the Commission's general counsel for these undertakings.

The Virginia Code Commission examined the provisions of this Title in detail and consulted officials of the State agencies interested in and affected by this Title. The Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission has caused Counsel to prepare a draft of revision of Title 40 in the usual form, i.e., a bill suitable for introduction at the 1970 Session of the General Assembly of Virginia, together with a Table of Contents and a Table of Comparable Sections. Source references and appropriate notes follow each section of the text.

The draft purports to reflect the Commission's careful consideration

of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations. It incorporates, among others, the following changes:

First—the repeal of Title 40 and the enactment in lieu thereof of Title 40.1.

Second—a general renumeration of the sections.

Third—the amendment of a number of sections in which certain provisions are ambiguous, redundant, obsolete, poorly expressed or contain words or phrases elsewhere redefined.

Fourth—the deletion of a number of sections, the provisions of which are obsolete, ambiguous, redundant or are incorporated into some other section.

The basic arrangement of chapters remains undisturbed and there is no change in the sequence of articles.

The text of Title 40.1 as prepared by Counsel purports to conform to the instructions and desires expressed by the Virginia Code Commission at its several meetings. Relying heavily upon established policies and procedures of the Commission, counsel has attempted to have the text of Title 40.1 reflect the Commission's judgment, both expressed and implied, in both form and substance.

Representative changes appearing in this revision are:

In § 40.1-2 (§ 40-1.1) the obsolete and redundant phrase "Commissioner of Labor" is deleted, the Commissioner's title now being "Commissioner of Labor and Industry" and all other prior references to "Commissioner of Labor" having been deleted from Title 40.1.

In subsection (2) of § 40.1-6 (§ 40-4) a word change recognizes that the Commissioner of Labor and Industry does not himself prosecute violations but causes them to be prosecuted.

In subsection (5) of § 40.1-6 (§ 40-4) the language is changed in several places to recognize that "representatives" of the Commissioner includes "investigators" and "assistants."

In § 40.1-7 (§ 40-5) the word "assistants" is changed to "representatives" for the reason given in the preceding paragraph.

§ 40.1-13 (§ 40-9.2) is somewhat shortened by deleting the transition provisions which are now obsolete. However, a change, which may be considered other than technical, appears in this section, the amount of the license fee therein mentioned being increased from \$10.00 to \$50.00.

In § 40.1-22 (§ 40-20) the words "of Labor and Industry" which followed the word "Commissioner" have been deleted as redundant. According to the definitions in § 40.1-2, the word "Commissioner" is given this meaning throughout the title. Similar conforming changes have been made throughout the title and will not again be detailed in this report. In subsection (2) of the same section, the language has been substantially revised, without substantive change, to eliminate now-obsolete transition language.

In § 40.1-23 (§ 40-20.1) the words "such rules and regulations" are changed to read "any such rule or regulation" to eliminate the possibility of misconstruction; the sub-paragraph being applicable to individual violations of the rules and regulations.

In § 40.1-25 (§ 40-20.3) there has been a slight reduction in wordage with no substantive change.

In § 40.1-49 (§ 40-61.3) the words "any rule or regulation" have been substituted for the words "such rules or regulations" for the reasons given above with respect to § 40.1-23.

In § 40.1-78 (§ 40-96.1) certain obsolete language has been deleted for technical reasons. For a further explanation, see the note following § 40.1-78.

In subsection (4) of § 40.1-80 (§ 40-97), the time until which fourteen and fifteen year old children may be employed in the evening between June 1 and September 1 is changed from 9:30 to 10:00 o'clock to resolve an inconsistency with § 40.1-87 (§ 40-100.3).

In §§ 40.1-89 (§ 40-100.5) and 40.1-92 (§ 40-101) there are conforming changes similar to those explained above.

In § 40.1-93 (§ 40-102), the provisions of subsection (1) are excepted from operation as provided under general exemption § 40.1-79 (§ 40-96.1) rather than "on farms or orchards or in gardens."

In § 40.1-96 (§ 40-105) there is a substituted exception similar to that made in § 40.1-93.

In § 40.1-98 (§ 40-107) the period of validity of an employment certificate is increased from twelve to twenty-four months to resolve a conflict heretofore existing between the provisions of this section and the provisions of § 40.1-95 (§ 40-104).

In § 40.1-107 (§ 40-116) the words "after twenty-four months from the date" are substituted for the words "annually on the anniversary date" to conform with § 40.1-95.

Chapter 7 (§§ 40-133 to 40-146) of Title 40, relating to now-obsolete "Master and Apprentice" practices, is deleted in its entirety. It should be observed, however, that the voluntary apprenticeship provisions of Chapter 6 (§§ 40-123 to 40-132) of Title 40 are retained as Chapter 6 (§§ 40.1-117 to 40.1-126) of Title 40.1.

## RECOMMENDATIONS

The Commission considers the accompanying draft of Title 40.1 as a substantial improvement over the present Title 40 and recommends its introduction at the 1970 Session of the General Assembly.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by this Title.

Respectfully submitted,

A. L. Philpott, Chairman  
William H. Hodges, Vice-Chairman  
G. M. Lapsley, Secretary  
Frederick T. Gray  
John Wingo Knowles  
Robert D. McIlwaine, III  
W. Carrington Thompson

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*A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to labor and employment; to that end to repeal Title 40 of the Code of Virginia, which title includes chapters 1 through 7 and §§ 40-1 to 40-146, inclusive, of the Code of Virginia as amended, and to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 40.1, which title includes new chapters numbered 1 to 6, inclusive, and new sections numbered 40.1-1 to 40.1-126, inclusive, relating to labor and employment; to prescribe when such revision and recodification shall become effective, and to repeal all acts and parts of acts in conflict with the provisions of this act.*

Be it enacted by the General Assembly of Virginia:

1. That Title 40 of the Code of Virginia, which title includes chapters 1 through 7 and §§ 40-1 to 40-146, inclusive, of the Code of Virginia, as amended, is repealed, with certain exceptions, and that the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 40.1, new chapters numbered 1 to 6, inclusive, and new sections numbered 40.1-1 to 40.1-126, inclusive, which new title, chapters and sections are as follows:

**TITLE 40**  
**LABOR AND EMPLOYMENT**  
**CHAPTER 1**  
**DEPARTMENT OF LABOR AND INDUSTRY**

**§ 40.1-1. Department continued; powers and duties of Bureau conferred on Department.**—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 and Title 45.1. 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.

Source: § 40-1.

Note: No change.

**§ 40.1-2. Definitions.**—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 Indus-

(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 proprietorship, firm or corporation 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.

Source: § 40-1.1.

Note: In paragraph numbered (2) the words "or 'Commissioner of Labor'" are deleted as unnecessary.

**§ 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.

Source: § 40-1.2.

Note: No change.

**§ 40.1-4. Biennial reports.**—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 or the productive industries and other business and commercial institutions of the State.

Source: § 40-2.

Note: No change.

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

Source: § 40-3.

Note: No change.

**§ 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 Titles 40.1 and 45.1 and shall cause to be prosecuted 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 40.1

and 45.1; all such rules and regulations shall be subject to chapter 1.1 (§ 9-6.1 et seq.) 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 as may be necessary to aid him in this work; their duties shall be prescribed by the Commissioner. The Commissioner or his representatives 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.

Source: § 40-4.

Note: In paragraphs numbered (2) the words "caused to be prosecuted" are substituted for the word "prosecuted." In paragraph numbered (5) the words "as may be necessary" are substituted for the words "and investigators"; after the word "work" and before the semicolon the words "and other assistants as may be necessary" are deleted; and the word "representatives" is substituted for the word "assistants."

**§ 40.1-7. Commonwealth's attorneys or assistants to prosecute on request of Commissioner.**—The Commonwealth's attorney 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.

Source: § 40-5.

Note: The word "representatives" is substituted for the word "assistants".

**§ 40.1-8. Other officers to furnish information.**—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.

Source: § 40-6.

Note: No change.

**§ 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.

Source: § 40-7.

Note: No change.

**§ 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 one hundred nor less than twenty-five dollars, or imprisoned in jail not exceeding ninety days, or both.

Source: § 40-8.

Note: No change.

**§ 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 or of Title 45.1.

Source: § 40-9.

Note: No change.

## CHAPTER 2

### EMPLOYMENT AGENCIES

**§ 40.1-12. Definitions.**—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 in payment for any service, either directly or indirectly by an employment agency from or on behalf of any person seeking employment or employees.

(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.

Source: § 40-9.1.

Note: No change.

**§ 40.1-13. Licenses.**—No person shall operate any employment agency within this State without first obtaining a license so to do from the Department. 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 fifty 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.

Source: § 40-9.2.

Note: Certain transition provisions, now obsolete, are deleted. "Fifty dollars" is substituted for "ten dollars".

**§ 40.1-14. Agencies to keep registers; what register to contain.**—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 representatives. The provision of this section shall not apply to any employment agency which does not charge any fee or commission to the employee.

Source: § 40-10.

Note: No change.

**§ 40.1-15. Registers open to inspection.**—The registers required by § 40.1-14 shall be open at all reasonable hours to the inspection and examination of the Commissioner or his representative.

Source: § 40-11.

Note: No change.

**§ 40.1-16. Amount of registration fee; receipt; return of fee; form and requisites of contract between agency and seeker of employment.**—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.

When any contract or agreement is made between a person seeking employment and such employment agency, such contract or agreement shall be in writing. The gross amount of any fee charged or any percentage of wages to be charged as fee, together with the duration of time such fee is to be paid or wages deducted, shall be specifically set out in such contract or agreement in bold black or red letters enclosed with a conspicuous black border. A copy of such contract or agreement shall be delivered to the applicant at the time the same is entered into. The Commissioner, or such person as he may delegate shall have authority to prescribe the form of such contract or agreement.

Source: § 40-12.

Note: No change.

**§ 40.1-16.1. Return of fee.**—In case the applicant shall not obtain a situation or employment through such licensed agency within thirty days after registration aforesaid, then the licensed agency shall forthwith repay and return to such applicant, upon demand being made therefore, the full amount of the fee paid or delivered by the applicant to the agency.

Source: § 40-13.  
Note: No change.

**§ 40.1-17. Request from employer before sending applicant; records to be kept.**—Such agency shall not send out an applicant for any employment within the provisions of this chapter, without having first obtained a request from the employer. The employer shall advise the agency the terms and conditions of employment. The agency shall keep on file a record showing the name and address of the employer, the name and address of the employee and the terms and conditions of employment. All such records shall be kept on file, for a period of three years, subject to review by the Commissioner or his representative.

Source: § 40-14.  
Note: No change.

**§ 40.1-18. What agency prohibited from doing.**—No agency shall send or cause to be sent any female help or servants to any place of bad repute, house of ill fame or assignation house or to any house or place kept for immoral purposes or to any person for immoral purposes. No such agency shall publish or cause to be published any information or make any promises not consistent with the duties relating to work or employment, or make any misleading statements concerning or relating to work or employment to anyone who shall register for employment. No such agency shall advertise its services as free if any person assumes any liability or contingent liability for any fees. No such agency shall advertise its services by means of cards, circulars, signs or in newspapers or other publications unless all such advertisements shall set forth the name and address of such agency. No such agency shall make any false entries in the register to be kept as herein provided. All entries in such register shall be made in ink. Any licensed person or agency shall not by himself or itself, agent, or otherwise, induce or attempt to induce any employee to leave his employment with a view of obtaining other employment through such agency.

Source: § 40-15.  
Note: No change.

**§ 40.1-19. Persons employed to hire employees not to receive any percentage, etc., of wages.**—No person, firm or corporation, or person employed or authorized by such person, firm or corporation to hire or discharge employees, shall receive any part of any fee or any percentage of wages or any compensation of any kind whatever that is agreed upon to be paid by any employee of such person, firm or corporation for any employment with such person, firm or corporation.

Source: § 40-16.  
Note: No change.

**§ 40.1-20. When violation a misdemeanor; penalty.**—Any person found guilty of a violation of any of the provisions of this chapter shall, subject



to the provisions of § 40.1-21, 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.

Source: § 40-18.

Note: No change.

**§ 40.1-21. When violation a felony; penalty.**—Any such licensed agency which shall knowingly send any female help or servants to any place of bad repute, house of ill fame or assignation house or to any house or place kept for immoral purposes, or to any person for immoral purposes, shall be deemed guilty of a felony and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the penitentiary not less than one year nor more than ten years, or by both such fine and imprisonment.

Source: § 40-19.

Note: No change.

## CHAPTER 3

### PROTECTION OF EMPLOYEES

#### Article 1

#### *General Provisions*

**§ 40.1-22. Safety Codes Commission.**—(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 shall be a member ex officio with full membership status.

(2) The appointive members shall be appointed for terms of four years each and vacancies occurring 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 twenty 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 45.1 thereto, and shall serve as advisor to the Commissioner. The Commission shall hear appeals arising under § 40.1-49. The findings of the Commission concerning the enforcement of §§ 40.1-39, 40.1-42, 40.1-45, 40.1-46, 40.1-47, 40.1-48 and 40.1-49 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 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia shall apply to the adoption of rules and regulations under this section and to proceedings before the Commission.

Source: § 40-20.

Note: The words "of Labor and Industry" which appear after the word "Commissioner" in paragraph (1) of § 40-20, are deleted. Paragraph numbered (2) is rewritten; the old language being: "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."

**§ 40.1-23. Authority of Commission to regulate handling, storage and use of explosives; "explosives" and "blasting agent" defined; rules and regulations; penalty for violation.—**(a) Whenever used in this section:

(1) "*Explosives*" means commercial explosives which are classified as of June twenty-ninth, nineteen hundred and sixty-two, in the regulations of the Interstate Commerce Commission for transportation of explosives and other dangerous articles as Class A, Class B or Class C explosives, and include but are not limited to dynamite, black blasting powder, pellet powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord and igniters.

(2) "*Blasting agent*" means any insensitive chemical composition or mixture of such insensitive compositions, containing no nitroglycerin or powder, which can be made to explode when initiated with an explosive primer.

(b) In addition to the authority conferred by § 40.1-22, the Safety Codes Commission, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend or repeal rules and regulations relating to the handling, storage and use of explosives or blasting agents, and enforce such rules and regulations. Such rules and regulations shall, insofar as practicable, be based upon the recommendations of recognized bodies in the field of demolition and explosives, and generally recognized bodies in the field of safety in the use of explosives and blasting agents which have promulgated standards for the protection of the public in such cases. Rules and regulations adopted by the Safety Codes Commission pursuant to this section shall be enforceable by the Commissioner and by all officers empowered to enforce the criminal law of the State.

(c) Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia shall apply to the adoption of rules and regulations under this section and to proceedings before the Commission.

(d) Any person violating any such rule or regulation shall be guilty

of a misdemeanor. Each day of violation shall constitute a separate offense.

Source: § 40-20.1.

Note: In paragraph (d) the words "any such rule or regulation" are substituted for the words "such rules and regulations."

**§ 40.1-24. Manufacturers of explosives to register with Commissioner.**  
—Every person, firm or corporation who or which manufactures in this State explosives as defined in § 40.1-23 shall register with the Safety Codes Commission. Each such registrant shall furnish to the Commission such information concerning his plant and method of operation, and shall also make such periodic reports to the Commission as it may deem necessary to protect the safety of the employees of such plant and the public.

Source: § 40-20.2.

Note: No change.

**§ 40.1-25. Permit to manufacture, store, handle, use or sell explosives.**  
—(a) No person shall engage in the manufacture, storage, handling, use or sale of explosives or blasting agents, as defined in § 40.1-23, without obtaining a proper permit so to do from the Department.

(b) Permits, other than a special use permit, shall be effective for the remainder of the calendar year in which issued and shall expire on the thirty-first day of December thereof. Application may be made in December for the ensuing calendar year in which such permits shall be effective. The fees required by this section shall be required for all permits issued for any calendar year or part thereof.

(c) Permits shall not be transferable.

(d) Permits shall be posted or used as prescribed on the face thereof.

(e) Individual applicants for a permit shall be twenty-one years of age or older. Each application shall be submitted to the Department accompanied by a post-office money order or check drawn in favor of the State Treasurer in the amount specified in subsection (f) of this section appropriate for the type of permit requested.

(f) Types of permits issuable, accompanied by appropriate application fees, are the following:

(i) For manufacturing—twenty-five dollars;

(ii) For storing and using explosives or blasting agents in Class A magazine which is defined as a magazine containing more than two hundred pounds of explosives—five dollars;

(iii) For storing and using explosives or blasting agents in Class B magazine which is defined as a magazine containing two hundred pounds or less—two dollars;

(iv) For selling wholesale and retail—fifteen dollars;

(v) For selling wholesale—ten dollars;

(vi) For selling retail—five dollars;

(vii) For special use, which permits are defined in subsection (g) of this section—one dollar; and

(viii) For small users which permits are defined in subsection (h) of this section—two dollars.

(g) A special use permit is one which the Department may issue to authorize a person not storing explosives or blasting agents to secure from another person owning an approved magazine and holding a permit for same, a limited quantity of explosives or blasting agents, not to exceed one hundred pounds, for immediate use on a specific blasting project. Any unused explosives or blasting agents shall be returned to the magazine from which secured at the end of each workday. Such special use permittee shall comply with all other applicable requirements of this section and rules and regulations of the Department and Safety Codes Commission.

(h) A small user's permit is one which the Department may issue for the purchase and use of a small quantity of explosives or blasting agents not to exceed fifty pounds. To be eligible for a small user's permit, the applicant must be operating a legitimate business under a license or charter issued by proper authority and must indicate the number and expiration date of same on his application, provided cemeteries having a grave-opening service, and not required to have a license or charter to operate, may be issued a permit.

(i) A separate permit must be obtained for each magazine, each manufacturing operation, each sales operation, and each special use project.

(j) The provisions of this section shall not apply to a person storing or using twenty-five or fewer pounds of explosives or blasting agents on property owned or occupied by him; provided, however, such person shall comply with all rules and regulations promulgated by the Department and Safety Codes Commission.

(k) The provisions of this section shall not apply to the storage, handling or use of explosives or blasting agents carried on under the provisions of Title 45.1 of the Code of Virginia.

(l) Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars nor more than one hundred dollars. Each day that such person continues in any activity which violates the provisions of this section shall be considered a separate offense.

Source: § 40-20.3.

Note: The words "any calendar year or part thereof" are substituted for the words "the calendar year nineteen hundred sixty-seven or any part thereof or any year thereafter or part thereof."

**§ 40.1-26. Department may assist and cooperate in enforcement of Fair Labor Standards Act.**—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 services 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 re-

ceived 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.

Source: § 40-21.

Note: No change.

**§ 40.1-27. Preventing employment by others of former employee.—**No person doing business in this State, 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 wilfully 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 one hundred nor more than five hundred dollars. 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.

Source: § 40-22.

Note: No change.

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

Source: § 40-22.1.

Note: No change.

## 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; penalty for violation of section; proceedings to enforce compliance.—**(a) All employers engaged in the operation of any business establishment shall establish regular pay periods and rates of pay for employees except executive personnel and 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. 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.

(c1) 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.

(d) An employer who violates this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars or confined in jail for any term not to exceed one year, or both.

(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.

Source: § 40-24.

Note: No change.

**§ 40.1-30. Registration of certain nonresident employers with Department.**—(a) Any employer domiciled without this State and performing any demolition, excavation, installation, paving, repair, maintenance, erection or construction work within this State for a fixed price, commission, fee or percentage, when the cost of the undertaking, order, contract or subcontract is not less than three hundred dollars nor more than twenty thousand dollars, 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. Provided, however, nothing in this section shall apply to any such contractor who is registered under the provisions of Title 54, chapter 7 (§ 54-113 et seq.), of the Code of Virginia. 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 State.

(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 one hundred dollars nor more than five hundred dollars. 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 State.

Source: § 40-24.1.

Note: The words "of Labor and Industry" after the word "Department" are deleted as unnecessary.

**§ 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 § 8-94.

(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.

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 paragraph (5) hereof.

Source: § 40-30.

Note: No change.

**§ 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.

Source: § 40-31.  
Note: No change.

**§ 40.1-33. Certain assignments not affected.**—The two preceding sections shall not be construed to apply to assignments of salaries, wages and income for the benefit of creditors as provided for in §§ 55-161 to 55-167.

Source: § 40-32.  
Note: No change.

### Article 3

#### *Employment of Women Generally*

**§ 40.1-34. Employers to provide suitable rest rooms and seats.**—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.

Source: § 40-33.  
Note: No change.

**§ 40.1-35. Regulation of hours of work of women.**—No female shall be employed, suffered or permitted to work in any business establishment in this State, except as provided in § 40.1-36, 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 intermitten 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 period of seven consecutive days, 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.

Source: § 40-34.  
Note: No change.

**§ 40.1-36. Exceptions.**—(a) The preceding section (§ 40.1-35) and following section (§ 40.1-37) shall not be construed to apply to any business establishment in this State meeting the requirements of the federal Fair



Labor Standards Acts (29 U.S.C. § 201 et seq.) with respect to hours, wages and record keeping for female employees eighteen years of age or older.

(b) Nothing in the preceding section (§ 40.1-35) 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) [Repealed.]

(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) [Repealed.]

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

(7) [Repealed.]

(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, or

(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.

Source: § 40-35.

Note: No change.

**§ 40.1-37. Employers to post copy of sections and keep records of names, addresses and times of work of female employees; Commissioner to furnish copies of sections.**—Every employer employing females to whom § 40.1-35 shall apply shall post in a place accessible to his employees a printed or typewritten copy of §§ 40.1-35 through 40.1-38 and shall keep a time book or time cards or other appropriate records showing the names and addresses of his female employees to whom § 40.1-35 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 to

gether 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 the preceding thirty-six months 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 §§ 40.1-35 through 40.1-38 on request of an employer.

Source: § 40-36.

Note: No change.

**§ 40.1-38. Penalties for violation of §§ 40.1-35 to 40.1-37.**—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 § 40.1-35, or who shall violate § 40.1-36 or § 40.1-37, 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.

Source: § 40-37.

Note: No change.

#### Article 4

##### *Sanitary Provisions*

**§ 40.1-39. Toilet facilities in places of employment.**—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.

Source: § 40-44.

Note: No change.

**§ 40.1-40. Commissioner to notify State Health Commissioner of facilities creating health problem.**—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.

Source: § 40-44.1.

Note: No change.

## Article 5

### *Safety Provisions*

**§ 40.1-41. Commissioner to notify State Fire Marshal of violations of Fire Hazards Law.**—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.

Source: § 40-54.1.

Note: No change.

**§ 40.1-42. Safety devices.**—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.

Source: § 40-55.

Note: No change.

**§ 40.1-43. Prohibiting use of machine in dangerous condition.**—If a machine or any part thereof is in a dangerous condition, or is not properly guarded, notice thereof shall be given to the manager or owner in charge of such operation and unless such machinery is repaired or made safe within thirty days after such notice the use thereof may be prohibited by the Commissioner and a notice to that effect shall be attached thereto. Such notice shall not be removed until the machine is made safe and the required safeguards are provided and in the meantime such unsafe or dangerous machinery shall not be used.

Source: § 40-56.

Note: No change.

**§ 40.1-44. Preceding provisions inapplicable to farm machinery.**—None of the provisions of the two preceding sections shall apply to machinery being operated on farms in connection with the production, harvesting or processing of agricultural products.

Source: § 40-57.

Note: No change.

**§ 40.1-45. Lighting halls, rooms, etc.**—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.

Source: § 40-58.

Note: No change.

**§ 40.1-46. Protection from heat, gases, vapors, fumes, dust and other impurities.**—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 substantially 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.

Source: § 40-61.

Note: No change.

**§ 40.1-47. Devices preventing or removing dust or refuse.**—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.

Source: § 40-61.1.

Note: No change.

**40.1-48. Safeguards against danger in construction, etc., work; rules and regulations of Safety Codes Commission.**—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 or general public 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 and the general public while such work is in progress. Such rules and regulations may be based upon the recommendations of recognized bodies in the field of construction, excavation and demolition, and generally recognized bodies in the field of safety which have promulgated standards for the protection of employees and the general public while such work is in progress.

Source: § 40-61.2.

Note: No change.

**§ 40.1-49. Proceedings upon violation of certain sections, rules and regulations.**—(1) Whenever the Commissioner finds that any business establishment or machinery therein violates §§ 40.1-39, 40.1-42, 40.1-45, 40.1-46, 40.1-47, 40.1-48 or any rule or regulation 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 by registered or certified mail, or it may be served in accordance with chapter 4 (§ 8-43 et seq.) of Title 8.

(2) If the business establishment charged with the violation objects to the findings or recommendations of the Commissioner set forth in the notice, it may file an appeal from such findings or recommendations with-

in thirty days from the date the notice of the Commissioner is delivered to, mailed, or served upon it. Upon the filing of an appeal the Commissioner shall forthwith refer it to the Safety Codes Commission, which shall with reasonable promptness pass upon the merits of such an appeal. No employer shall be granted more than one appeal to the Safety Codes Commission for the same or substantially similar violations on the same or subsequent operations when the Safety Codes Commission has previously determined that such conditions are in violation of appropriate provisions of this title or rules and regulations pursuant thereto.

(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 charged with a violation hereunder until the violation has been corrected or a final determination favorable to the employer has been made by the Safety Codes Commission.

(4) Any person guilty of a violation of the sections listed in paragraph (1), or any rule or regulation shall be guilty of a misdemeanor and upon conviction in any court of competent jurisdiction 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 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, punishable as set forth in subparagraph (4) supra, and the violation shall be subject to being enjoined as a nuisance.

Source: § 40-61.3.

Note: In paragraphs numbered (1) and (4) the words "any rule or regulation" are substituted for the words "rules and regulations."

**§ 40.1-50. Checks on occupational diseases.**—The State Health Commissioner or his duly authorized representatives of the Bureau of Industrial Hygiene shall have the right of entry at reasonable hours into any industrial or commercial establishment where persons are employed for the purpose of checking on occupational disease and to take such samples and tests as necessary to establish the degree of hazard existing.

Source: § 40-62.1.

Note: No change.

**§ 40.1-51. Rules and regulations for control.**—The State Health Commissioner may recommend to the industry affected reasonable rules and regulations to control occupational disease as defined by §§ 65.1-46 and 65.1-47 of the Code of Virginia.

Source: § 40-62.2.

Note: No change.

## 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 State, 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, not to exceed a total holding of five acres in extent at any one time. 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 State.

The provisions of this section shall apply to any real estate acquired prior to June twenty-seven, nineteen hundred sixty-six, 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.

Source: § 40-63.

Note: No change.

**§ 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.

When a strike or lockout is in progress, no person who is not, or immediately prior to the time of the commencement of any strike or lockout was not, a bona fide employee of the business or industry being picketed shall participate in any picketing or any picketing activity with respect to such strike or lockout.

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.

Source: § 40-64.

Note: No change.

**§ 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 one hundred dollars nor more than one thousand dollars for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense.

Source: § 40-64.1.

Note: No change.

## Article 2

### *Strikes by Government Employees*

**§ 40.1-55. Employee striking terminates, and becomes temporarily ineligible for, public employment.**—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 wilfully 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 twelve months by the Commonwealth, or any

county, city, town or other political subdivision of the State, or by any department or agency of any of them.

Source: § 40-65.

Note: No change.

**§ 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.

Source: § 40-66.

Note: No change.

**§ 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 corporation or hustings 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.

Source: § 40-67.

Note: No change.

### 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.

Source: § 40-68.

Note: No change.

**§ 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.

Source: § 40-69.

Note: No change.

**§ 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.

Source: § 40-70.

Note: No change.

**§ 40.1-61. Employers not to require abstention from membership in union.**—No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

Source: § 40-71.

Note: No change.

**§ 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.

Source: § 40-72.

Note: No change.

**§ 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.

Source: § 40-73.

Note: No change.

**§ 40.1-64. Application of article to contracts.**—The provisions of this article shall not apply to any lawful contract in force on April thirtieth, nineteen hundred and forty-seven, but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of an existing contract.

Source: § 40-74.

Note: No change.

**§ 40.1-65. Agreement or practice designed to cause employer to violate article declared illegal.**—Any agreement, understanding or practice which is designed 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.

Source: § 40-74.1.

Note: No change.

**§ 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, lay-offs, 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.

Source: § 40-74.2.

Note: No change.

**§ 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.

Source: § 40-74.3.

Note: No change.

**§ 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 State, all of whose officers and trustees are nonresidents of this State, 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.

Source: § 40-74.4.

Note: No change.

**§ 40.1-69. Violation and penalty.**—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 and punishable by fine not exceeding five hundred dollars. Each day of continued violation after conviction shall constitute a separate offense and shall be punishable as herein provided.

Source: § 40-74.5.

Note: No change.

## 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.

Source: § 40-95.1.

Note: The words “of Labor and Industry” after the word “Department” are deleted as unnecessary.

**§ 40.1-71. Notice of proposed termination or modification of collective bargaining contract; notice prior to work stoppage.**—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.

Source: § 40-95.2.

Note: No change.

**§ 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.

Source: § 40-95.3.

Note: No change.

**§ 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.

Source: § 40-95.4.

Note: The words “of Labor” appearing after the word “Commission-

**§ 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.

Source: § 40-95.5.

Note: The words “of Labor” appearing after the word “Commissioner” have been deleted.

**§ 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.

Source: § 40-95.6.

Note: No change.

## Article 5

### *Registration of Labor Unions, Labor Associations and Labor Organizations*

**§ 40.1-76. Triennial registration required; forms; notice of change in officers.**—Every labor union, labor association or labor organization doing business in this State whether it be an affiliate of an international, national or State labor organization or an independent organization, shall register once every three years with the Department not later than forty-five days after January first of each year registration is required. Registration shall be on forms furnished by the Department on request and include the following information:

(a) Name of the union, association or organization and business address thereof; and

(b) Name and address of the principal officers in the State of Virginia or the registered agent.

In addition to such triennial registration, each such union, association and organization shall notify the Department in writing within thirty days of any change in the officers designated on such registration form.

Source: § 40-95.7.

Note: The words “of Labor and Industry” after the word “Department” are deleted as unnecessary.

**§ 40.1-77. Failure to register.**—Any such union, association or organization failing to register as required by § 40.1-76 shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars for such violation. Each year the union, association or organization fails to register shall constitute a separate violation.

Source: § 40-95.8.

Note: No change.

## CHAPTER 5

### CHILD LABOR

**§ 40.1-78. Employment of children under fourteen and sixteen.**—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

farm work performed outside of school hours with the consent of the child's parent or guardian, and except as specified in this chapter.

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 completed high school, or unless he has reached the age of fourteen and a provisional employment certificate has been issued for his employment as provided in § 40.1-90 or 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.

Nothing in this or the following section (§ 40.1-79) shall be construed as qualifying the provisions of §§ 40.1-100, 40.1-101 and 40.1-102.

Source: § 40-96.

Note: No change.

**§ 40.1-79. Exemptions from chapter generally.**—Nothing in this chapter, except the provisions of § 40.1-103, shall be construed to apply to the employment of 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 the person standing in place of his parent, or to occasional work performed by a child outside school hours where such work is in connection with the home of the employer but not in connection with his business, trade, or profession.

Nothing in this chapter shall apply to a child employed in connection with a school playground or a supervised playground operated by the State, or by a county or municipal government, or by a corporation the property of which is tax exempt.

Nothing in this chapter shall relate to work outside of school hours on farms, in orchards or in gardens performed with the consent of the child's parent or guardian.

Source: § 40-96.1.

Note: In the second paragraph after the word "chapter" the words "except paragraph (3) of subsection (B) of § 40-109" are deleted. The 1968 amendment of § 40-96 (40.1-78) made the language which is here deleted unnecessary and obsolete. Additionally, the last paragraph of § 40-96.1, from which 40.1-79 is derived, has been deleted as obsolete; that paragraph having read: "Nothing in this chapter except the provisions of § 40-112, shall apply to a child who was lawfully employed for a period of ninety days prior to the twenty-ninth day of June, nineteen hundred forty-eight."

**§ 40.1-80. Employment of children under eighteen.**—Except as provided in §§ 40.1-99, 40.1-102, 40.1-105 and 40.1-109, no child under eighteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation:

- (1) More than six days in any one week, except on farms, orchards or in gardens;
- (2) More than forty hours in any one week;
- (3) More than eight hours in any one day; nor
- (4) Before the hour of seven o'clock in the morning or after the hour

of six o'clock in the evening, except on farms, in orchards or in gardens; provided that boys over fifteen years of age may be employed after the hour of five o'clock in the morning; provided further that boys and girls fourteen and fifteen years of age may be employed after the hour of seven o'clock in the morning and may work as late as ten o'clock in the evening on any day not followed by a school day if the superintendent of schools of the county or city of residence of such child, or if there is none then a person designated by the State Superintendent of Public Instruction, approves the application of any such child; provided finally that when the local superintendent of schools or the person designated by the Superintendent of Public Instruction permits such work he shall set out his reasons in full in writing for so doing and send a copy thereof with a copy of the work permit to the Commissioner.

During the period between June first and September first, children of fourteen and fifteen years of age may be employed until ten o'clock in the evening, provided that no work day shall exceed eight hours and no work week shall exceed forty hours.

Boys sixteen and seventeen years of age may be employed until midnight, and girls of such age who are enrolled in school may be employed until ten o'clock in the evening, and girls of such age who are not enrolled in school may be employed until eleven o'clock in the evening.

No child under eighteen years of age 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.

For the purposes of this chapter the word "*day*" shall be construed to mean any period of twenty-four consecutive hours. The word "*week*" shall be construed to mean any seven consecutive days. Provided, however, that nothing in this section shall be construed to prohibit an employee from working shift work after an unbroken rest period of twelve hours.

Source: § 40-97.

Note: In the first unnumbered paragraph after paragraph numbered (4), the word "ten" is substituted for the words "nine thirty" to resolve the inconsistency with respect to § 40-100.3 (40.1-87).

**§ 40.1-81. Employers to post notices of hours, etc.**—Every employer shall post and keep posted conspicuously in the place where any child is employed, permitted or suffered to work a printed notice, setting forth the maximum number of hours such child may be required, or permitted, to work each day of the week, the hours of beginning and ending of work each day, and the hours when the time allowed for meals begins and ends.

Source: § 40-98.

Note: No change.

**§ 40.1-82. Exemptions from two preceding sections.**—Nothing in §§ 40.1-80 or 40.1-81 shall apply to the work of children sixteen years of age and over on farms, in orchards, or in gardens, nor to any person employed by the State Department of Highways.

Source: § 40-98.1.

Note: No change.

**§ 40.1-83. Employment of children in streets or public places.**—No boy under fourteen and no girl under eighteen years of age shall be employed, permitted or suffered to work in a street or public place in connection with any gainful occupation, except as provided in §§ 40.1-105 to 40.1-109.

Source: § 40-99.

Note: No change.

**§ 40.1-84. Employment certificate required.**—No child under eighteen years of age shall be employed, permitted or suffered to work, in, about or in connection with any gainful occupation with the exception of work on farms, orchards and in gardens, and except as provided in §§ 40.1-79, 40.1-99 to 40.1-102 and 40.1-105, 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 person, charged with the enforcement of this chapter, the employment certificate as hereinafter provided, issued for such child.

Source: § 40-100.

Note: No change.

**§ 40.1-85. Kinds of employment certificates.**—Employment certificates shall be of four kinds: general employment certificate, work-training certificate, vacation or part-time employment certificate, and provisional employment certificate.

Source: § 40-100.1.

Note: No change.

**§ 40.1-86. General employment certificate.**—A general employment certificate shall permit the employment of a child between sixteen and eighteen years of age, or a child who has completed high school, during the entire year.

Source: § 40-100.2.

Note: No change.

**§ 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 eighteen years of age only during school vacation periods or on days when school is not in session, or outside school hours on school days. Such certificate for vacation or part-time employment of a child between fourteen and sixteen years of age may authorize the employment of such child until ten o'clock in the evening on any day not followed by a school day.

Source: § 40-100.3.

Note: No change.

**§ 40.1-88. Work-training certificate.**—A work-training certificate shall permit the employment of a child between fourteen and eighteen years of age during school hours when enrolled in a regular school work-training program.

Source: § 40-100.4.

Note: No change.

**§ 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 operate power-driven woodworking, metal forming, punching or shearing machines or power-driven paper product machines or any other similarly dangerous machinery or operations designated by the Commissioner unless such employment shall be 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 by the employer with on-the-job training; 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 may be revoked at any time that it shall appear that reasonable precautions for the safety of such child have not been observed.

Source: § 40-100.4:1.

Note: No change.

**§ 40.1-90. Provisional employment certificate.**—A provisional employment certificate shall permit the employment of a child between fourteen and sixteen years of age who has been found to be incapable of profiting from further school attendance. Such provisional employment certificate shall be issued in accordance with § 40.1-92 by the officer named therein, and shall be issued according to standards fixed by the State Board of Education regarding children found to be incapable of profiting from further school attendance, and shall be issued only to children who have been or will be released from school. A copy of such certificate shall be filed by the issuing officer with the Commissioner. No child shall be found incapable of profiting from further school attendance, for the purpose of this section, if the division superintendent of schools shall find that such child may benefit from available specialized instruction adapted to his needs. A provisional employment certificate may be revoked if the Commissioner or his authorized representative finds that such employment is not for the child's best interests.

Source: § 40-100.5.

Note: The words "of Labor and Industry" appearing after the word "Commissioner" are deleted as unnecessary. In the last sentence, the word "representative" is substituted for the word "agent".

**§ 40.1-91. School and part-time employment certificates.**—A part-time employment certificate shall be issued subject to the provisions of § 40.1-92 which shall permit the employment of a child between fourteen and sixteen years of age when the division superintendent of schools shall find it in the best interests of the child to follow a program of part-time school attendance and part-time employment. Such employment shall be under the supervision of the division superintendent of schools. Such certificate may be revoked by such superintendent or the Commissioner.

Source: § 40-100.6.

Note: No change.



**§ 40.1-92. Issuance of such certificates.**—Employment certificates shall be issued only by the division superintendent of schools, or by any person designated by him in the city or county in which the child is to be employed and only upon application in person of the child desiring employment, accompanied by the parent, guardian or custodian of such child, provided that in the case of a child sixteen or seventeen years of age, the written consent of the child's parent, guardian or custodian may be presented in lieu of the personal appearance of such parent, guardian or custodian. The division superintendent of schools shall designate one person to grant such permits in every city or county. The person issuing such certificate shall have authority to administer the oath provided for therein, or to make any investigation or examination necessary for the issuance thereof. No fee shall be charged for issuing any such certificate nor for administering any oath or rendering any services in respect thereto. The officer issuing the certificate shall retain a copy of each such certificate and all documents connected therewith shall be mailed to the Commissioner by the end of the week in which the same shall have been issued for review and approval. The Commissioner shall file and preserve such certificates and documents.

Source: § 40-101.

Note: The words "of Labor" appearing after the word "Commissioner" are deleted as unnecessary.

**§ 40.1-93. Proof for employment certificate.**—The person authorized to issue an employment certificate shall not issue such certificate until he has received, examined, approved and filed the following papers:

(1) Except for work coming within one of the exceptions in § 40.1-79, 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 the daily time of the beginning and ending of such employment and of the period for lunch, and agreeing to send the notice of the commencement of employment and to return the certificate according to the provisions of this chapter.

(2) Proof of age as provided in § 40.1-94.

(3) A certificate of physical fitness as provided in § 40.1-95.

Source: § 40-102.

Note: In paragraph numbered (1) the words "coming within one of the exceptions in § 40.1-79" are substituted for the words "on farm or orchards or in gardens".

**§ 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.

Source: § 40-103.

Note: The words "of Labor" which appear after the word "Commissioner" are deleted.

**§ 40.1-95. Certificate of physical fitness.**—The certificate of physical fitness required by this chapter shall be signed by a public health, school, or other physician, and shall be on a form approved by the State Department of Health. It shall show height and weight of the child and shall state that the child has been thoroughly examined by the physician within a period of thirty days of the time of his initial employment and has been found to be of normal development for a child of his age, is in sound health, and is physically qualified for the type of employment specified in the statement submitted by the employer. The certificate of physical fitness herein required shall be valid for a period of two years; provided, however, that if the physical requirements of the initial or subsequent employment are increased substantially during such period a new certificate of physical fitness shall be obtained therefor; provided, however, no person shall be prosecuted for failure to obtain or require such new certificate until he shall have been notified by the Commissioner or his representative that such is required

Source: § 40-104.

Note: The word “representative” is substituted for the word “agent”.

**§ 40.1-96. Contents of employment certificates.**—The employment certificate required to be issued shall state the name, sex, color, 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 person issuing it. 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, 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 the date of its expiration, and shall be signed by the child for whom it is issued in the presence of the person issuing it. It shall be issued in triplicate, one copy to be mailed to the employer, one copy to be sent to the Commissioner and one copy to be retained and kept on file by the issuing officer.

Source: § 40-105.

Note: The words “of Labor” which appeared after the word “Commissioner” are deleted.

**§ 40.1-97. Reports by employers of children.**—Every employer receiving an employment certificate shall notify the Commissioner within seven days of the time of the commencement of the employment of such child and within seven days after the termination of the employment shall return the certificate to the Commissioner. Failure so to notify shall be cause for the cancellation of the certificate, and failure so to return it shall be cause for the refusal of further certificates upon the application of such employer.

Source: § 40-106.

Note: The words “of Labor” which appeared after the word “Commissioner” are deleted.

**§ 40.1-98. Duration of employment certificates.**—An employment certificate shall be invalid after twenty-four months from date of physical fitness examination unless there shall have been filed with the issuing officer a new certificate of physical fitness as provided for in § 40.1-95.

Source: § 40-107.

Note: The period of validity of an employment certificate is increased from "twelve" to "twenty-four" months to resolve a conflict heretofore existing between the provisions of this section and the provisions of § 40-104 (40.1-95).

**§ 40.1-99. Employment as messengers.**—No male under sixteen years of age and no female under eighteen years of age shall be employed, permitted or suffered to work as a public messenger for any telegraph or interstate communication company or service in the distribution, transmission or delivery of goods or messages at any time. No male under sixteen years of age and no girl under eighteen years of age shall be employed, permitted or suffered to work as a public messenger for any telegraph or interstate communication company or service in the distribution, transmission or delivery of goods or messages before five o'clock in the morning or after midnight of any day. In case of emergency only, a boy of legal age may be employed for not more than three days as such a messenger without an employment certificate, provided that the employer immediately files a notice of such employment with the person authorized to issue an employment certificate to such boy.

Source: § 40-108.

Note: No change.

**§ 40.1-100. Certain employment prohibited.**—(A) No child under eighteen years of age shall be employed, permitted or suffered to work:

(1) In any mine, quarry, tunnel, underground scaffolding work or handling explosives;

(2) In or around any dangerous machinery or to operate or assist in operating any dangerous machinery or passenger or freight elevator; provided, however, that children sixteen years of age and older may operate automatic passenger elevators;

(3) In oiling or assisting in oiling, wiping and cleaning any such machinery except as provided in § 40.1-89, provided further, however, that children sixteen years of age and older who are serving a voluntary apprenticeship as provided in chapter 6 (§ 40.1-117 et seq.) of this title may operate, oil or assist in operating, oiling, wiping and cleaning 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 or white lead, or in any place where goods of alcoholic content are manufactured, bottled, or sold for consumption on the premises except in places where the sale of alcoholic beverages is merely incidental to the main business actually conducted, or to deliver alcoholic goods;

(6) As an X-ray technician or as an operator of X-ray equipment;

(7) In any capacity in or about excavation or demolition operations;

(8) As a driver or a helper on a truck or commercial vehicle, provided that a boy sixteen years of age or older may be employed as a driver or a helper on a truck or commercial vehicle provided said vehicle has no more than two axles. The provisions of this paragraph shall not apply to the drivers of school buses.

(B) No boy under sixteen and no girl under eighteen shall be employed, permitted or suffered to work:

(1) In any undertaking establishment or funeral home, provided, however, that this shall not apply to children fourteen years of age and over who are engaged in purely office work of a clerical nature;

(2) In any scaffolding work or construction trades or in any brick, coal or lumberyard or ice plant; provided, however, that this section shall not apply to children fourteen years of age and over who are engaged in purely office work of a clerical nature;

(3) In any theater, concert hall or club; provided, however, that girls sixteen years of age and over may be employed in the lighted lobby or office, but not as ushers, in a theater or concert hall, but this exception shall not apply to outdoor theaters; provided, however, that girls sixteen years of age and over may engage in purely office work in separate office rooms at a club;

(4) In any cabaret, carnival, floor show, pool hall, parking lot, place of amusement or bowling alley; provided, however, that boys fourteen years of age and over may be employed in bowling alleys completely equipped with automatic pin setters, but not in or about such machines;

(5) In any roadhouse, curb service restaurant as defined in § 35-25, or in any hotel or motel, provided that subject to paragraph A (5) of this section, boys fourteen years of age and over and girls sixteen years of age and over may be employed in soda fountains, restaurant and hotel and motel food service departments, but no such minor may be employed in hotel room service; and provided, however, that girls sixteen years of age and over may engage in purely office work in established bona fide office rooms separate from the other facilities in hotels and motels. For the purpose of this section, the definition of a restaurant shall be deemed not to include a food service establishment operated by or in conjunction with a school or college where a child employed therein is enrolled as a pupil at such school or college;

(6) In processing work in any laundry or dry cleaning establishment; provided, however, that children fourteen years of age or more may be employed in branch stores, or in purely office work in separate office rooms, and provided, however, that girls sixteen years of age or more may work at the customer desk in laundry and dry cleaning establishments provided they do not work in or around the processing machinery.

(C) No child under sixteen years of age shall be employed, permitted or suffered to work:

(1) In any manufacturing or mechanical establishment or commercial cannery at any time, except in purely office work, or to operate any elevator as his primary employment;

(2) In any hospital, nursing home, clinic, or other establishment providing care for resident patients as a laboratory helper, therapist, orderly or nurses' aid;

(3) At a dance studio or warehouse or veterinary hospital;

(4) As a bait attendant on any boat, pier or place at which boats are let for hire, except boys of fourteen or more; or for concessionaires, provided, however, that boys and girls fourteen years of age or more may work for concessionaires operating on beaches where the duties and work

of such children pertain to the handling and distribution of beach chairs, umbrellas, floats and other similar or related beach equipment.

Source: § 40-109.

Note: No change.

**§ 40.1-101. Qualification as to theaters.**—Notwithstanding the preceding section, a boy under sixteen or a girl under eighteen years of age, whether a resident or nonresident of the State, 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 State shall secure a permit from the Commissioner; provided, however, 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 non-commercial programs.

Source: § 40-110.

Note: The words “of Labor” which appeared after the word “Commissioner” are deleted.

**§ 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

Source: § 40-111.

Note: The words “of Labor” which appeared after the word “Commissioner” are deleted.

**§ 40.1-103. Cruelty and injuries to children.**—It shall be unlawful for any person employing or having the custody of any child wilfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or wilfully 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, or cruelly beaten or cruelly treated. Any person violating this section shall be guilty of a misdemeanor.

Source: § 40-112.

Note: No change.

**§ 40.1-104. Age certificates.**—An age certificate shall be issued, upon request of the employer or the worker, for a child eighteen 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 child'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 minor for whom issued in any proceeding involving the employment of the minor under any of the labor laws of this State as to any act occurring subsequent to its issuance and prior to its revocation.

Source: § 40-113.

Note: No change.

**§ 40.1-105. Bootblacks, caddies, newsboys, errand boys, etc.; badges required.**—Any boy between twelve and sixteen years of age may engage in the occupation of (1) bootblacking, (2) caddying, (3) selling newspapers, magazines, periodicals or circulars which are by law permitted to be distributed and sold, (4) running errands or delivering parcels, or messages where none of the duties of such occupation are to be performed inside any commercial establishment, and provided all such employment shall be at such hours between six o'clock ante meridian and one-half hour after sunset as the public schools are not in session, provided such boy procures and carries on his person a badge as hereinafter provided.

The provisions of this section shall not apply to any such boy in any case where the duties of his occupation are performed at the direction and under the supervision of an employer, in which event an employment certificate shall be required.

**§ 40.1-106. Maximum hours in such employment.**—No boy engaged in any of the street trades mentioned in the preceding section shall work more than eight hours in any one day.

**§ 40.1-107. Issue, form and renewal of badges.**—Such badge as is required by § 40.1-105 shall be issued by the same person authorized to issue an employment certificate and upon compliance with all the requirements for the issuance of an employment certificate. It shall bear a number and on its reverse side shall bear the address and date of birth of the child in whose name it is issued. It shall be signed on such reverse side by such child in the presence of the person issuing it. No charge shall be made for the use of such badge.

All badges shall be renewed after twenty-four months from the date of the physical fitness examination of such child.

Source: § 40-116.

Note: In the last paragraph the words “after twenty-four months from the date” are substituted for the words “annually on the anniversary date” to conform with § 40.1-95.

**§ 40.1-108. Badges nontransferable; wearing same.**—No boy to whom such badge is issued shall transfer it to any other person, nor be engaged in any of the trades and occupations mentioned in § 40.1-105 without having conspicuously on his person such badge, and he shall exhibit the same upon demand to any police officer, school attendance officer, or to any representative of the Department or other person charged with the duty of enforcing the provisions of this chapter.

Source: § 40-117.

Note: No change.

**§ 40.1-109. Newsboys on regular routes; hours; badges not required; newspaper carrier certificates.**—Notwithstanding the other provisions of this chapter, any boy between twelve and sixteen years of age may daily engage in the occupation of distributing newspapers on regularly established routes between the hours of five o'clock ante meridian and seven o'clock post meridian, excluding the time public schools are actually in session. Such carrier boys shall not be required to procure or carry a badge, but in lieu thereof the publisher of the newspaper which any such boy delivers on such route, having been furnished with satisfactory proof of age as provided in § 40.1-94, shall issue a newspaper carrier certificate on a form prescribed by the Commissioner, showing the name, age, address, and school attended, of such boy, and shall send copies of such certificate to the division superintendent of schools and the Department, and shall retain a file copy. Such certificate shall remain in effect until the publisher is notified that such boy does not appear physically fit from his health record or that in the opinion of the division superintendent his school record indicates that his school work is not compatible with such occupation. Such carrier boy shall carry such certificate on his person at all times that he is engaged in his duties. No such certificate shall be required of any such carrier boy between sixteen and eighteen years of age, or of any carrier boy so employed in any city having a population of less than ten thousand or in any county having a population of less than ninety thousand and which is not adjacent to any city having a population of more than ninety thousand.

Source: § 40-118.

Note: The words “of Labor and Industry” which appear after the word “Commissioner” are deleted.

**§ 40.1-110. Employment for different employers without obtaining more than one certificate of physical fitness.**—The Commissioner may establish rules and regulations permitting any child under the age of eighteen years to be employed in any gainful occupation, for different employers, where the type of work is essentially similar, without obtaining more than one certificate of physical fitness as required by this chapter. For any child qualifying to work under the provisions of this section, such employment certificates may be issued upon notification to the Department by the child or any of his employers.

Source: § 40-118.1.

Note: No change.

**§ 40.1-111. Employment for one day or less in connection with school studies.**—No employment certificate or certificate of physical fitness shall be required when the employment is one day or less and is required, or extracurricular work, in connection with the studies of any child at any public or accredited private school. The school shall furnish to the Commissioner the names and addresses of the participating child or children, the type of employment undertaken, the name and address of the business participating in such activity, the fact that such child or children have the permission of the parent or legal guardian of such child or children in writing, and the date of such employment.

Source: § 40-118.2.

Note: No change.

**§ 40.1-112. Soliciting subscription contracts for books, magazines, etc.**—(1) 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 to engage in or to employ any person for, or suffer or permit any person in his employment to engage in, solicitation, sale, or obtaining of 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.

(2) Such permits shall be valid from the date of issuance until June thirty next following 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 or location at which applicant operates within this State.

(3) 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.

(4) No girl under the age of eighteen years shall be employed, permitted or suffered to work by or for any permittee under this section under any circumstances or conditions.

(4.1) No boy under the age of eighteen years shall be employed, permitted or suffered to work by or for any permittee unless all the following conditions are satisfied:

- (a) The boy is at least sixteen years of age; and
- (b) The permittee has a permanent business address within this State; and
- (c) The boy is not required or permitted to work at any place more than twenty-five miles distant from the address specified in his employment certificate and in no case beyond the boundaries of this State; and
- (d) The boy works at all times under the immediate supervision of an adult; and
- (e) The boy is not permitted or required to work a greater number of hours than permitted by § 40.1-80 of the Code of Virginia. The maxi-



mum hours of employment during each day shall be computed from the time the employee was required to report for work at the address of the employer specified in his employment certificate to the time he is released from work at such address or is delivered to his home address; and

(f) No boy shall be required, permitted or directed to make any false statement representing himself, his employer or products or services in his employment.

(5) Any person violating any provision or condition of this section shall be guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than five hundred dollars or punished by confinement in jail for any period not to exceed one year, or both, 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.

Source: § 40-118.3.

Note: In paragraph numbered (3) the words “a representative” are substituted for the words “an agent”.

**§ 40.1-113. Child labor offenses.**—Whoever employs, procures, or, having under his control, permits a child to be employed, or issues an employment certificate in violation of any of the provisions of this chapter other than § 40.1-103, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars for the first offense, not less than twenty-five dollars nor more than one hundred dollars for the second offense, and not less than fifty dollars nor more than five hundred dollars for any subsequent offense, or in addition to such fine in the case of such subsequent offense, may be confined in jail not less than thirty days nor more than ninety days. Any employment contrary to the provisions of this chapter shall be prima facie evidence of guilt both as to employer and the person having control of the child.

Source: § 40-119.

Note: No change.

**§ 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 supervise the work of the attendance officers or other persons in each city and county authorized to enforce this chapter and shall make all necessary rules and regulations for carrying out the purposes of this chapter, and shall prescribe and supply to the proper officials blanks for employment certificates, badges for street trade, and such other forms as may be required for carrying out the provisions of this chapter.

Source: § 40-120.

Note: The words “of Labor” which appeared after the word “Commissioner” are deleted. The word “representatives” is substituted for the words “inspectors and assistants”.

**§ 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 State, nor as authorizing the employment of any child who is absent unlawfully from school.

Source: § 40-121.

Note: No change.

**§ 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.

Source: § 40-122.

Note: No change.

## CHAPTER 6

### VOLUNTARY APPRENTICESHIP

**§ 40.1-117. Apprenticeship Council; membership and terms of office; meetings and duties; compensation and expenses.**—The Governor shall appoint an Apprenticeship Council, composed of three representatives each from employer and employee organizations respectively. The Commissioner and the State Supervisor of Trade and Industrial Education shall be members, ex officio, of the Council. At the beginning of each year the Governor shall designate one member to serve as chairman. The original appointments having been for terms of one, two and three years and all successors having been appointed for three years, each member hereafter shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of such term.

The Apprenticeship Council shall meet at the call of the chairman of the Council and shall formulate policies for the effective administration of this chapter.

The Apprenticeship Council shall establish standards for apprentice agreements which shall not be lower than those prescribed by this chapter, and shall perform such other functions as may be necessary to carry out the intent and purposes of this chapter. Not less than once a year the Council shall make a report of its activities and findings to the General Assembly and to the public.

The members of the Apprenticeship Council shall each receive as compensation the sum of twenty dollars for each day or part thereof actually spent in the performance of their duties, in addition to their reasonable actual expenses incurred as a result thereto.

Source: § 40-123.

Note: No change.

**§ 40.1-118. Authority of Council.**—The Council, in co-operation with the local and State joint apprenticeship committees, may:

(1) Determine standards for apprentice agreements, which standards shall not be lower than those prescribed by this chapter;

(2) Appoint the secretary of the Apprenticeship Council to act as secretary of each State joint apprenticeship committee;

(3) Approve, if in their opinion approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established under this chapter;

(4) Terminate or cancel any apprentice agreement in accordance with the provisions of such agreement;

(5) Keep a record of apprentice agreements and their disposition;

(6) Issue certificates of journeymanship upon the completion of the apprenticeship; and

(7) Perform such other duties as are necessary to carry out the intent of this chapter;

Provided, that the administration and supervision of related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of State and local boards responsible for vocational education.

Source: § 40-124.

Note: No change.

**§ 40.1-119. Local and State joint apprenticeship committees.**—A local joint apprenticeship committee shall be appointed in any trade or group of trades in a city or trade area, by the Apprenticeship Council, whenever the apprentice training needs of such trade or group of trades justify such establishment.

When two or more local joint apprenticeship committees have been established in the State for a trade or group of trades or at the request of any trade or group of trades, the Apprenticeship Council may appoint a State apprenticeship committee for such trade or group of trades. Such local and State joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees respectively.

The functions of a local joint apprenticeship committee shall be:

(1) To co-operate with school authorities in regard to the education of apprentices;

(2) In accordance with standards established by the Apprenticeship Council, to establish local standards of apprenticeship regarding schedule of operations, application of wage rates, working conditions for apprentices and the number of apprentices which shall be employed locally in the trade; and

(3) To adjust apprenticeship disputes.

The functions of a State trade apprenticeship committee shall be to assist in the establishment of State-wide standards of apprenticeship and in the development of local standards and local committees.

Source: § 40-125.

Note: No change.

**§ 40.1-120. “Apprentice” defined.**—The term “apprentice” shall mean a person at least sixteen years of age who is covered by a written agreement with an employer and approved by the Apprenticeship Council, which apprentice agreement provides for not less than four thousand hours of reasonably continuous employment for such person, for his participation in an approved schedule of work experience through employment and the amount of related instruction required in the craft or trade.

Source: § 40-126.

Note: No change.

**§ 40.1-121. Requisites of apprentice agreement.**—Every apprentice agreement entered into under this chapter shall contain:

(1) The names of the contracting parties.

(2) The date of birth of the apprentice.

(3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related or supplemental instruction.

(5) A statement setting forth a schedule of the processes in the trade or industry division in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(7) A statement providing for a period of probation of not less than five hundred hours of employment and instruction extending over not less than four months, during which time the apprentice agreement shall be terminated by the Council at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the Council by mutual agreement of all parties thereto, or cancelled by the Council for good and sufficient reason.

(8) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may with the approval of the Council transfer such contract to any other employer, provided the apprentice consents and such other employer agrees to assume the obligations of the apprentice agreement.

(9) Such additional terms and conditions as may be prescribed or approved by the Council not inconsistent with the provisions of this chapter.

Source: § 40-127.

Note: No change.

**§ 40.1-122. Approval of agreement by Council; signing.**—No apprentice agreement under this chapter shall be effective until approved by the Council. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 40.1-124, and by the apprentice, and, if the apprentice is a minor, by the minor's father; provided, that if the father be dead or legally incapable of giving consent or has abandoned his family then by the minor's mother; if both father and mother be dead or legally incapable of giving consent, then by the guardian of the minor.

Source: § 40-128.

Note: No change.

**§ 40.1-123. Agreement binding after apprentice's majority.**—When a minor enters into an apprentice agreement under this chapter for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

Source: § 40-129.

Note: No change.

**§ 40.1-124. Agreement signed by organization of employers or of employees.**—For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the Council be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the Council, to such employer or employers as shall sign a written agreement with the apprentice, and if the apprentice is a minor with his parent or guardian, as specified in § 40.1-122, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the agreement entered into between the apprentice and the employer association or employee organization.

Source: § 40-130.

Note: No change.

**§ 40.1-125. Commissioner to administer chapter.**—The Commissioner, with the advice and guidance of the Council, shall be responsible for administering the provisions of this chapter.

Source: § 40-131.

Note: No change.

**§ 40.1-126. Operation and application of chapter.**—Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees, setting up higher apprenticeship standards. But none of the terms or provisions of this chapter shall apply to any person, firm, corporation or craft unless, until and only so long as such person, firm, corporation or craft voluntarily elects that the terms and provisions of this chapter shall apply.

Source: § 40-132.

Note: No change.

2. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

3. The repeal of Title 40 effective October 1, 1970, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 40 nor the enactment of Title 40.1 shall apply to offenses committed prior to October 1, 1970, and prosecutions for such offenses shall be governed by the prior law; which is

continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October 1, 1969, if any of the essential elements of the offense occurred prior thereto.

4. Whenever in Title 40.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 40 as such title existed prior to October 1, 1970, are transferred in the same or in modified form to a new section, article or chapter of Title 40.1 and whenever any such former section, article or chapter of Title 40 is given a new number in Title 40.1, all references to any such former section, article or chapter of Title 40 appearing in the Code of Virginia shall be construed to apply to the new and renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

5. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

6. This act shall become effective October 1, 1970.



