

**REPORT OF THE
SPECIAL SUBCOMMITTEE STUDYING**

Child Labor Laws

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**REPORT OF THE SPECIAL SUBCOMMITTEE
STUDYING CHILD LABOR LAWS**

to

The Governor and the General Assembly of Virginia
Richmond, Virginia
January 1991

To: The Honorable L. Douglas Wilder, Governor of Virginia,
and
The General Assembly of Virginia

I. EXECUTIVE SUMMARY

A. Origin of Study

At the initial House Labor and Commerce meeting of the General Assembly's 1990 Session, the Commissioner of the Virginia Department of Labor and Industry provided the Committee with an overview of legislative issues pertinent to both the Department and the Committee. In this briefing, the Department indicated its desire to have Virginia's child labor laws reviewed and revised.

Subsequently, Delegate Munford, Chairman of the Labor and Commerce Committee, sponsored legislation (House Joint Resolution No. 148, 1990) which would have established a joint subcommittee to examine child labor laws. It was later determined that the study would take the form of a special subcommittee ("the subcommittee") consisting of members from the House Labor and Commerce and the Senate Commerce and Labor standing committees, who would be appointed by their respective chairmen.

B. Overview

The Commonwealth's laws relating to the employment of children were enacted in 1914 with the objective, as expressed by the Virginia Supreme Court, of preserving the lives and limbs of children. Standard Red Cedar Chest Co. v. Monroe, 125 Va. 442, 99 S.E. 589 (1919). Administered by the Virginia Department of Labor and Industry ("the Department"), these statutes address the types of employment and hours of employment permitted and prohibited for children under the age of eighteen, and also prescribe penalties for violations.

Child labor in Virginia is also regulated at the federal level by the United States Department of Labor pursuant to the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). The federal law applies to persons employed in interstate commerce or in the production of goods in interstate commerce. However, state law supersedes federal law when a state provision is more stringent than a corresponding federal statute or regulation.

Because federal law applies to the large majority of Virginia employers, inconsistencies between a number of state child labor provisions and federal provisions served as the focal point of this study. The subcommittee concluded that confusion caused by these inconsistencies would be reduced and greater protection would be provided to Virginia's working children if many of the Commonwealth's child labor provisions were amended to conform to the federal law. Among the subcommittee's recommendations to the General Assembly are many such changes (see Appendix B), including conforming provisions regarding permitted hours of work for fourteen- and fifteen-year-olds and the application of child labor laws to agricultural occupations.

The subcommittee convened seven meetings, which included three public hearings held throughout the Commonwealth. Through this process, the subcommittee gained valuable insight from a variety of perspectives about the practical impact of child labor laws (and their possible revision) on employers, the judiciary, schools, parents, and children. The recommendations of the subcommittee reflect thoughtful consideration of all such perspectives.

Following a brief discussion of child labor regulation at the state and federal levels, this report will review the work of the subcommittee, concentrating specifically upon its findings and recommendations, as well as the public policy implications of its proposals.

II. BACKGROUND

A. The Fair Labor Standards Act

The U.S. Fair Labor Standards Act ("FLSA") is the primary federal law regulating the wages and working conditions of child workers. This Act gives the Department of Labor the authority to regulate child labor in the areas of hours of work, minimum ages for employment, and hazardous occupations.

In nonagricultural occupations, the Act generally sets a basic minimum working age of sixteen, although fourteen- and fifteen-year-old children are permitted to work in specified occupations, within limited hours. These children may be employed only outside of school hours and no more than three hours per day on a school day, eighteen hours per week during a school week, and between 7 a.m. and 7 p.m. However, when school is not in session, fourteen- and fifteen-year-olds are permitted to work as many as eight hours per day, forty hours per week, and until 9 p.m. between June 1 and Labor Day.

In addition, the Secretary of Labor has declared by regulation seventeen occupations which are particularly hazardous and potentially detrimental to the health and well-being of children. Persons under eighteen years of age, except for apprentices, student learners, and others specifically exempted, are prohibited from working in these occupations by federal law.

In agriculture, sixteen is the minimum working age under the FLSA for any occupation declared hazardous by the Secretary of Labor, while fourteen is the minimum age requirement for occupations not so declared. However, twelve- and thirteen-year-olds may work on any farm with written parental consent and minors of *any age* may be employed by their parent or person standing in place of their parent at *any time in any occupation* on a farm owned or operated by their parent or person standing in place of their parent (i.e. "family farms").

The Wage and Hour Division, a unit of the Department of Labor's Employment Standards Administration, administers and enforces federal child labor standards. The Division's compliance officers investigate child labor violations as part of their investigations for compliance with other FLSA provisions and also in response to complaints or referrals from sources such as newspapers, schools, or state agencies.¹

The maximum civil money penalty per violation was recently increased tenfold at the federal level. Employers found in violation of any child labor provisions of the FLSA are now subject to civil money penalties of up to \$10,000 for each employee who is a subject of such violation ("Omnibus Budget Reconciliation Act", signed by the President on November 6, 1990).

Covered employment under the Fair Labor Standards Act includes employees engaged in interstate commerce. This includes, among others:

Workers in the telephone, telegraph, radio, television, importing, and transportation industries; employees in distributing industries, such as wholesaling, who handle goods moving in interstate commerce, as well as workers who order, receive, or keep records of such goods; and clerical and other workers who regularly use the mails, telephone, and telegraph for interstate or foreign communication.

Employees who work in places that produce goods for interstate commerce, such as manufacturing establishments, oil fields, and mines; or in occupations that are closely related or directly essential to the production of such goods.

Employees in enterprises having employees handling, selling or working on goods or materials that have been moved in or produced for interstate commerce.

In agriculture, employees whose occupations involve growing crops or raising livestock which will leave the State directly or indirectly through a buyer who will either ship them across State lines or process them as ingredients of other goods which will leave the State.²

In addition, a federal child labor provision applies unless a corresponding state provision is more restrictive.

The child labor provisions of the FLSA do not apply to: (i) children under sixteen years of age employed by their parents in occupations other than

manufacturing or mining, or to such children in occupations declared hazardous by the Secretary of Labor; (ii) children employed as actors or performers in motion pictures, theatrical, radio, or television productions; (iii) children engaged in the delivery of newspapers to the consumer; or (iv) home workers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of evergreens). Other types of employment are specifically exempted from federal child labor provisions, including employment by children on their family's farm.

B. Virginia's Child Labor Laws

Virginia's laws regarding child labor are contained in Chapter 5 of Title 40.1 (Va. Code § 40.1-78 et seq.). The Commonwealth's child labor laws differ in many respects from the child labor provisions of the Fair Labor Standards Act.

While there are no hours restrictions for children who are at least sixteen in either state or federal law, Virginia's provisions with respect to hours of work for fourteen- and fifteen-year-olds in nonagricultural occupations are less restrictive than corresponding FLSA provisions. Under state law, such children may work, during nonschool hours, up to eight hours per day and forty hours per week, *regardless of whether school is in session*. Further, issuance of a special employment certificate allows fourteen- and fifteen-year-old children to work until 9 p.m. on any night, including school nights. Employment certificates are not recognized under federal law.

Va. Code § 40.1-100 lists several occupations in which children under eighteen are prohibited from being employed. In addition, subdivision A 9 of that section provides the Commissioner of the Department of Labor and Industry with statutory authority to promulgate regulations regarding hazardous occupations. These regulations, which closely parallel federal regulations, are applicable to children under eighteen (except those specifically exempted) employed in nonagricultural occupations.

In agricultural occupations, children performing farm work outside of school hours with the consent of their parent or guardian are entirely exempted from Virginia's child labor provisions (§ 40.1-79). One result of this exemption is that Virginia does not have any hazardous occupations regulations in agriculture. The FLSA, which only exempts children working on family farms from its child labor provisions (and which does have regulations for hazardous agricultural occupations), is more restrictive in this respect than the state statute.

There are other areas where the Commonwealth's child labor provisions differ from federal law. For example, Virginia law provides an exemption to children who are participants in the activities of a volunteer firefighting or rescue squad and to children employed by the state or any public body. Such exemptions are not recognized under the Fair Labor Standards Act. In addition, the maximum civil money penalty for each violation of the Commonwealth's child labor laws is \$250.

The Commonwealth's child labor provisions apply if (i) the employee is not in interstate commerce or (ii) the employee is in interstate commerce but a pertinent Virginia child labor law is more stringent than a corresponding federal provision. Because almost all businesses have been deemed to be in interstate commerce, and, with a few exceptions, federal child labor provisions are more stringent than Virginia's, the federal law applies in a great majority of instances.

C. Recent Enforcement Activity

In response to concerns about illegal child labor in the United States in the latter half of the 1980's, Congress commissioned the U.S. General Accounting Office (GAO) to investigate increases in child labor violations. In its April 1990 report, the GAO determined that federal detection of illegally employed minors had risen 145 percent between 1983 and 1989³ (see Table 1).

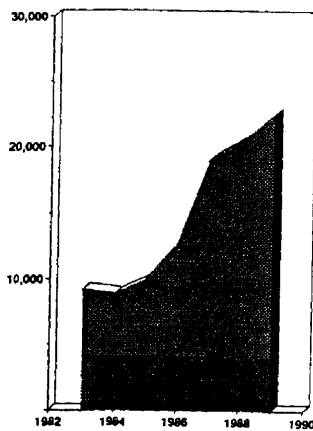
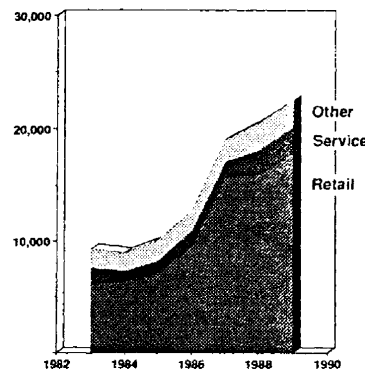


TABLE 1:
**Federally Detected Illegally
 Employed Minors,
 (Fiscal Years 1983 - 1989)**

According to the report, U.S. Department of Labor statistics indicate that an increasing proportion of minors illegally employed are working in the retail trade industry. Of those children found to be illegally employed, the number in the retail trade industry increased from approximately 66% in fiscal year 1983 to nearly 79% in fiscal year 1989⁴ (see Table 2). Moreover, federal child labor violations are concentrated within certain segments of the retail trade industry. In fiscal year 1989, almost three-fourths of *all* illegally employed minors were in two retail trade sectors. Nationally, restaurants accounted for 44% and grocery stores accounted for 29% of the violations.

TABLE 2:
**Detected Illegally Employed Minors,
 by Major Industry Group, for the U.S.
 (Fiscal Years 1983 - 1989)**



While there were increases in all types of detected violations of federal child labor laws between 1983 and 1989, the GAO report indicated that the greatest growth occurred in violations of hours standards, which tripled. Detected violations of federal minimum age and hazardous order standards roughly doubled during that period⁵ (see Table 3).

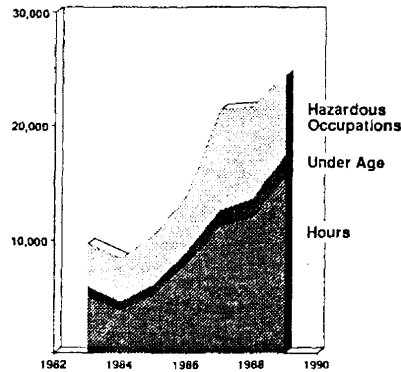


TABLE 3:
Detected Federal Child Labor
Violations, by Type, for the U.S.
 (Fiscal Years 1983 - 1989)

In its January briefing to the House of Delegates Labor and Commerce Committee, the Department of Labor and Industry indicated that the applicability of state and federal child labor provisions was confusing to many employers, parents, judges, schools, and children. The Commissioner stated that many employers who complied with Virginia law were violating federal law and were subject to fines by the Department of Labor. The Department of Labor and Industry requested that a study of child labor laws be initiated to revise and update such laws.

In February of 1990, the U.S. Department of Labor announced a five-point plan to combat child labor violations. As part of the plan, the Department intensified enforcement efforts. In March, the Department conducted a child labor strike force it called "Operation Child Watch." Over 3,400 companies were investigated nationwide, resulting in the detection of over 11,000 violations.

In Virginia, seventy-six companies were investigated as part of Operation Child Watch, forty-seven of which were found to have some form of federal child labor violation. Of the total detected violations, there were 214 violations of hours standards, forty-two violations of occupational standards, and six violations of hazardous orders. Virginia employers were assessed \$54,640 in civil monetary penalties as a result of the initial three-day effort by the Department of Labor.

The actions by the U.S. Department of Labor illustrated the point that a study of Virginia's child labor laws was both necessary and timely and that its objective should be to study the means by which the interests of all parties might be better balanced and to further protect the health and well-being of child workers in Virginia.

D. Study Participants

Delegate Joan H. Munford of Blacksburg, Chairman of the House Labor and Commerce Committee and this subcommittee, appointed four members to serve with her on the subcommittee: Delegates Robert S. Bloxom of Mappsville, Bernard S. Cohen of Alexandria, W. Tayloe Murphy, Jr. of Warsaw, and Jane H. Woods of Fairfax.

Senator William E. Fears of Accomac, Chairman of the Senate Committee on Commerce and Labor, appointed two members to serve with him on the subcommittee: Senators Robert C. Scott of Newport News, who served as the subcommittee's Vice Chairman, and Yvonne B. Miller of Norfolk.

The staff of the Department of Labor and Industry provided valuable expertise and support to the subcommittee and its staff. Participating in the study from the Department were Carol Amato, Commissioner; Dennis Merrill, Director, Division of Labor Law Administration; Marilyn Mandel, Director, Division of Planning, Research & Policy Analysis; Judy Stevens, Program Assistant; and Elaine Elliot and E. Joseph Farisi, Regional Field Supervisors from Tidewater and Northern Virginia, respectively.

The subcommittee received testimony and materials from a wide variety of persons and groups at its meetings, including several agencies of the Commonwealth and other government entities. Input was also provided by private sector participants. Appendix A lists public and private organizations which participated in the study.

III. WORK OF THE SUBCOMMITTEE

A. Testimony and Findings

Concerns presented by the Department of Labor and Industry to the General Assembly in January of 1990 proved to be justifiable ones when many Virginia employers were fined by the Department of Labor during its child labor strike force effort in March. At the subcommittee's initial meeting in April, the Department briefed the members on the activity at the federal level and highlighted differences between Virginia's child labor provisions and the related provisions of the Fair Labor Standards Act (see Part II, "Background").

The central focus of the subcommittee's work was drawn more narrowly at its second meeting in May when the panel solicited testimony from state and federal government representatives. Many of these witnesses raised specific points of concern based on their experience with child labor issues.

James W. Kight, a regional administrator of the Wage and Hour Division of the U.S. Department of Labor (Philadelphia), provided the subcommittee with the Administration's perspective on federal enforcement of child labor laws. He told the subcommittee that movement at the federal level among policy makers and regulators is toward tighter laws, increased penalties, and more stringent enforcement. For example, the maximum civil money penalty for a violation of federal child labor provisions was increased from \$1,000 to \$10,000 in the fall of 1990. Mr. Kight also testified that enforcement efforts could be significantly enhanced--and compliance more readily maintained--if the Commonwealth were to adopt legislation consistent with the child labor provisions of the Fair Labor Standards Act.

In other testimony, Charles E. Poston, a judge of the Norfolk Juvenile and Domestic Relations District Court, indicated that judges would prefer to be removed from the work permit issuing process. Many judges, he explained, lack the expertise to perform this function adequately due to the complexity involved. Moreover, according to Mr. Poston, judges are uncomfortable knowing that many employers are given a false sense of security about their compliance with all child labor laws after a judge has issued a work permit to a child worker.

Also appearing before the subcommittee was Martha Gilbert, the Director of the Department for Children. She testified that the penalty for violations of the cruelty to children provision (§ 40.1-103) needed strengthening. In addition, both Dr. Gilbert and Linda Byrd-Harden, representing the Virginia State NAACP, stated that current provisions covering children employed in agricultural occupations are inadequate.

In order to receive critical input from citizens throughout the Commonwealth, the subcommittee held three public hearings during the summer and fall of 1990. In July, a large gathering attended a hearing in Blacksburg; in September, the subcommittee solicited testimony from farmers, migrant workers, and their representatives on the Eastern Shore; and in October, the subcommittee traveled to Northern Virginia, where large numbers of teenagers are employed.

Several groups were well-represented at each of the public hearings, including the Virginia Farm Bureau Federation, individual farmers, and representatives of migrant farm workers. Much of the testimony focused on numerous discrepancies between federal law and state child labor provisions. The subcommittee found that since a great majority of employees are engaged in interstate commerce and most FLSA provisions are more restrictive than Virginia's child labor provisions, the federal law controls in virtually all instances.

Although the subcommittee received some testimony indicating that the Commonwealth's child labor provisions should be amended to be more restrictive than federal provisions, most witnesses appearing before the panel testified that Virginia's child labor provisions should conform to the federal law. The primary reasons for this rationale were that (i) conforming Virginia law to the federal law would greatly reduce confusion among employers, judges, parents, schools and children about which provisions (state or federal) are applicable to child workers and (ii) amending the Commonwealth's child labor provisions where they are less stringent than federal law will better protect the health and well-being of child workers in Virginia.

While the subcommittee did recommend conforming many state child labor law provisions to the federal law, there were several provisions that the subcommittee recommended not be conformed to federal law. For example, the subcommittee recommends no substantive changes in the area of hazardous occupations regulations in nonagricultural occupations. Several subcommittee members questioned the wisdom of eliminating the current state hazardous occupations provisions pursuant to § 40.1-100 and adopting federal regulations. While some testimony indicated that there may be gaps in current Virginia hazardous occupations regulations, importing federal regulations would not alleviate the problem and could possibly be detrimental. An important provision recommended by the subcommittee establishes a "general duty clause" (see "Recommendations" and Appendix B, p. 13) which would assist in filling potential voids in current regulations.

In addition, despite the fact that federal law makes no exceptions for volunteer activities (e.g., firefighting), the subcommittee did not recommend making changes to state law to conform to federal law in this area. Many members and witnesses commented that eliminating these exemptions would adversely affect volunteer efforts and would deny youngsters opportunities which benefit themselves and their communities.

Another topic that generated ample discussion but did not result in any recommendation to the General Assembly in the form of legislation involved the accessibility of data on injuries to children in the workplace. Testimony indicated that detailed, accurate statistical information on such injuries, particularly in agricultural occupations, is incomplete and unreliable. The subcommittee members strongly believe that better and more reliable data collection methods for injuries incurred by children on the job need to be developed.

B. Recommendations

The subcommittee held two work sessions at which it crafted its recommendations to the legislature. The draft legislation proposes comprehensive changes to the Commonwealth's child labor statutes. Introduced as House Bill No. 1794, major provisions of the draft appear, with comments, as Appendix B of this report. Va. Code §§ 16.1-241, 16.1-260, and 16.1-279 are also part of the draft, but are not included due to their length. These proposed amendments relieve the judiciary of the obligation to issue work permits under certain circumstances.

In addition, the subcommittee has written a letter to the Virginia delegation of Congress expressing the sense of the panel that Congress should review current hours limitations under the Fair Labor Standards Act (see Appendix C).

A statement by Delegate Cohen concerning children employed in agricultural occupations appears as Appendix D of this report.

Generally speaking, the subcommittee's recommendations, if implemented, will not dramatically alter current business practice in the Commonwealth because most employers and child workers are already required to adhere to most federal provisions relating to the employment of children. Conforming many of Virginia's child labor provisions to the federal law is intended to reduce confusion caused by the inconsistencies and to facilitate more complete and consistent enforcement of the law.

The modifications to agricultural exemptions may have an impact on non-family farms that are not in interstate commerce. For example, such an operation would have to comply with the state hazardous occupation regulations in agriculture that the Commissioner of the Department of Labor and Industry is permitted to promulgate under this draft (see Appendix A, p. 3 for additional comment).

The draft addresses many of the issues raised by subcommittee members, the staff of the Department of Labor and Industry, and other interested parties. Major aspects of the proposal include amendments to Chapter 5 of Title 40.1 (§ 40.1-78 et seq.) which: (i) require the Commissioner of the Department of Labor and Industry to promulgate regulations regarding hours of employment for fourteen- and fifteen-year-old children which must incorporate the standards contained in regulations promulgated pursuant to the Fair Labor Standards Act (Appendix B, pp. 3-4); (ii) modify current exemptions in agricultural occupations for children employed with the consent of their parent or guardian and for children employed by their parents on family farms that generally correspond with federal exemptions (pp. 1-3); (iii) create a general duty clause for situations which are capable of causing serious physical harm or death and in which an employer has endangered or injured a child by violating recognized industry standards (p. 13); and (iv) increase the penalties for violations of the chapter generally from \$250 to \$1,000 (pp. 17-18) and for violations of the cruelty to children provision from a misdemeanor to a Class 6 felony (p. 14).

IV. CONCLUSION

The Commonwealth's statutes governing the employment of children had not been thoroughly reviewed by the legislature since 1978, when efforts were directed at making changes in Virginia law to conform to provisions in the Fair Labor Standards Act (House Document No. 34, 1979). A review of child labor laws was initiated during the 1990 interim with similar intentions and results.

Participation in this effort by federal, state, and local governments, representatives of a variety of interest groups, and a great many of the citizens of the Commonwealth has assisted in making the project particularly comprehensive, insightful and worthwhile. The members of the subcommittee would especially like to thank the staff of the Department of Labor and Industry for its extensive input into this study.

The subcommittee believes that its recommendations properly balance the interests of employers, administrators, interest groups, parents, and, most importantly, the child workers of Virginia. It urges the General Assembly to enact its legislative proposal at the 1991 Session.

Respectfully submitted,

Joan H. Munford, Chairman
Robert C. Scott, Vice Chairman
Robert S. Bloxom
Bernard S. Cohen
W. Tayloe Murphy, Jr.
Jane H. Woods
William E. Fears
Yvonne B. Miller

APPENDICES

Appendix A -- Study Participants

Appendix B -- Draft Legislation with Comments

Appendix C -- Letter to Virginia Congressional Delegation

Appendix D -- Statement by Delegate Cohen

Appendix E -- List of Federal Hazardous Occupations in Agriculture

FOOTNOTES

1. "Child Labor: Increases in Detected Child Labor Violations Throughout the United States," United States General Accounting Office Report to the Honorable Don J. Pease, House of Representatives, April 1990, p. 2.
2. "Child Labor Requirements Under the Fair Labor Standards Act," United States Department of Labor, Employment Standards Administration, Wage and Hour Division (Child Labor Bulletin No. 101), p. 1.
3. United States General Accounting Office, p. 52.
4. Ibid., p. 54.
5. Ibid., p. 55.

APPENDIX A - Study Participants

United States Department of Labor
Supreme Court of Virginia
Department for Children
Department of Social Services
Department of Education
Governor's Education and Training Department
Juvenile and Domestic Relations District Court
Commonwealth's Attorneys' Services and Training Council
Virginia Polytechnic Institute and State University
Mount Vernon College Anthropology Department
Montgomery County Schools
Virginia VIEW
Virginia Farm Bureau Federation
Virginia Agribusiness Council
Peninsula Legal Aid
Eastern Shore Migrant Ministries
DelMarVa Rural Ministries
Telemon Corporation
Virginia State - NAACP
Virginia Pediatric Society
Virginia Gasoline and Automobile Repair Association
Montgomery County Office on Youth
New River Health District

APPENDIX B

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

A. No child under fourteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation ~~7-except-farm-work-performed-outside-of-school-hours-with-the-consent-of-the-child's-parent-or-guardian7-and-except~~ as specified in this chapter.

B. No child under sixteen years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation during school hours ~~7-unless-he-has-completed-high-school7-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.

C. Nothing in this ~~or-the-following-section-(§-40.1-79)-section~~ shall ~~be-construed-as-qualifying-affect~~ the provisions of §§ 40.1-100 A, 40.1-100.1, 40.1-100.2, 40.1-101 and 40.1-102.

COMMENT: Deletes exemption which currently permits children under fourteen to do farm work during non-school hours with parental consent. A partial exemption is retained in subdivision A3 of § 40.1-79.01 and in subsection B of that section; deletes reference to provisional employment certificate provision (§ 40.1-90), which is proposed for repeal. A provisional employment certificate permits employment during school hours for fourteen- and fifteen-year-olds who have been found to be incapable of profiting from further school attendance. This provision is proposed for repeal because it is rarely utilized and is in conflict with the Commonwealth's compulsory school attendance provisions; makes technical and clarifying changes to cross-section references.

§ 40.1-79.01. Exemptions from chapter generally.--A. Nothing in this chapter, except the provisions of §§ 40.1-100 A, 40.1-100.1, 40.1-100.2, and 40.1-103, shall apply to:

1. A child engaged in domestic work when such work is performed in connection with the child's own home and directly for his parent or a person standing in place of his parent;

2. A child employed in occasional work performed outside school hours where such work is in connection with the employer's home but not in connection with the employer's business, trade, or profession;

3. A child twelve or thirteen years of age employed outside school hours on farms, in orchards or in gardens with the consent of his parent or a person standing in place of his parent;

4. A child between the ages of twelve and eighteen employed as a page or clerk for either the House of Delegates or the Senate of Virginia;

5. A child participating in the activities of a volunteer rescue squad; or

6. A child under sixteen years of age employed by his parent in an occupation other than manufacturing.

B. Nothing in this chapter, except §§ 40.1-100.1, 40.1-100.2, and 40.1-103, shall be construed to apply to a child employed by his parent or a person standing in place of his parent on farms, in orchards or in gardens owned or operated by such parent or person.

COMMENT: Replaces § 40.1-79, which is proposed for repeal. This section modifies, and more clearly sets out, the exemptions from (and applications to) this chapter. Applies the general duty clause (proposed § 40.1-100.1), hazardous occupations regulations provision (§ 40.1-100A), sexually explicit material section (§ 40.1-100.2) and the cruelty to children provision (§ 40.1-103) to employment performed pursuant to this section. Excludes the hazardous occupations regulations provision from employment performed pursuant to subsection B of this section (a "family farm" exemption).

ADDITIONAL COMMENT: With the modification of current exemptions as proposed in §§ 40.1-78 and 40.1-79.01 (in conjunction with the repeal of § 40.1-79), the Department of Labor and Industry would be permitted to promulgate hazardous occupations regulations in agriculture (under subdivision A 9 of § 40.1-100), except for family farms. Comments by Department of Labor and Industry representatives to the subcommittee indicated that the Department anticipates promulgating hazardous occupations regulations in agriculture which will conform to those promulgated by the Secretary of Labor pursuant to the child labor provisions of the Fair Labor Standards Act. The agricultural occupations currently declared hazardous by the Secretary of Labor are enumerated in Child Labor Bulletin No. 102. Please refer to Appendix E for a complete list of such occupations.

§ 40.1-79.1. Exemptions from chapter generally; local ordinance authorizing participation in volunteer fire company activities.--A. Any county, city or town may authorize by ordinance any person sixteen years of age or older, with parental or guardian approval, to work with or participate fully in all activities of a volunteer fire company, provided such person has attained certification under National Fire Protection Association 1001, level one, fire fighter standards, as administered by the Department of Fire Programs.

B. Any trainer or instructor of such persons mentioned in subsection A of this section ~~or~~and any member of a paid or volunteer fire company who supervises any such ~~person~~persons shall be exempt from the provisions of § 40.1-103 when engaged in activities of a volunteer fire company, provided that the volunteer fire company or the governing body of such county, city or town has purchased insurance which provides coverage for injuries to or the death of such ~~person-in-his~~persons in their performance of activities under this section.

COMMENT: Clarifies intent to exempt trainers and instructors of sixteen- and seventeen-year-old volunteer firefighters from the cruelty to children provision only when such trainers and instructors are engaged in that capacity.

§ 40.1-80.1. Employment of children.--A. Except as provided in §§ 40.1-79.01, 40.1-88, 40.1-102, and 40.1-109, no child under sixteen

years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation more than the number of hours per week or more than the number of hours per day or during the hours of the day that the Commissioner shall determine by regulations to be detrimental to the lives, health, safety or welfare of children. These regulations shall incorporate the standards contained in regulations promulgated by the United States Secretary of Labor pursuant to the Fair Labor Standards Act (29 U.S.C. § 201, et seq.) concerning the number of hours per week, hours per day, and the hours of the day that children under the age of sixteen may work in, about, or in connection with, any gainful occupation.

B. No child shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work.

COMMENT: Replaces § 40.1-80, which is proposed for repeal. This section requires the Commissioner of the Department of Labor and Industry to promulgate regulations regarding permitted hours of employment for fourteen- and fifteen-year-old children. These regulations must incorporate the standards contained in regulations promulgated pursuant to the Fair Labor Standards Act. This will change permitted hours of work for such children in Virginia from: 40 hours per week during a school week to 18 hours per week; 8 hours per day on a school day to 3 hours per day; and until 9 p.m. on a night followed by a school day to until 7 p.m. on such a night. Please refer to the report for discussion about the limited practical effect of this amendment.

§ 40.1-81.1. Records to be kept by employers.--Every employer employing minors under sixteen years of age shall keep a time book or time cards or other appropriate records for such minor employees which shall show the beginning and ending time of work each day together with the amount of time designated as a free-from-duty meal period, which is deductible from the schedule of hours of work. The record for

the preceding twelve months for each such minor employee shall be kept on the premises for a period of ~~twelve-thirty-six~~ months from the date of the latest work period recorded for the minor employee involved.

COMMENT: Requires every employer employing children under sixteen to maintain records regarding the hours worked by such children for a period of thirty-six months from the date of the latest employment by the child. Presently, these records must be kept for twelve months. The amendment conforms to current federal record-keeping requirements under the FLSA.

§ 40.1-84. Employment certificate required.--No child under sixteen years of age shall be employed, permitted or suffered to work, in, about or in connection with any gainful occupation with the exception of volunteer work or work on farms, orchards and in gardens and except as provided in §§ ~~40:1-79, 40:1-99 to 40:1-102 and 40:1-105,~~ 40.1-79.01, 40.1-101, and 40.1-102 unless the person, firm or corporation employing such child, procures and keeps on file and accessible to any school attendance officer, representative of the Department or other authorized persons, charged with the enforcement of this chapter, the employment certificate as hereinafter provided, issued for such child.

COMMENT: Clarifies that employment certificates are not required for children doing volunteer work; makes technical changes to cross-section references.

§ 40.1-85. Kinds of employment certificates.--Employment certificates shall be of ~~four~~ two kinds: work-training certificate ~~and vacation or part-time employment certificate~~ ~~and school and part-time employment certificate~~.

COMMENT: Deletes references to two kinds of employment certificates, which are proposed for elimination. Section 40.1-91, which is proposed for repeal, provides for the issuance of a school and part-time employment certificate that permits part-time employment

of a fourteen- or fifteen-year-old child during school hours. This certificate, along with the provisional employment certificate (see § 40.1-78 Comment), are proposed for elimination because they are rarely utilized and are in conflict with the Commonwealth's compulsory school attendance provisions.

§ 40.1-87. Vacation or part-time employment certificate.--A vacation or part-time employment certificate shall permit the employment of a child between fourteen and sixteen years of age only during school vacation periods or on days when school is not in session, or outside school hours on school days. ~~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 nine o'clock in the evening on any day not followed by a school day.--~~

COMMENT: Eliminates provision which permits a fourteen- or fifteen-year-old to work until 9 p.m. on any day not followed by a school day. However, such children will be permitted to work until such time between June 1 and Labor Day (see § 40.1-80.1; will be accomplished by regulation).

§ 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. However, a child sixteen or seventeen years of age may be employed in certain hazardous occupations as provided for in rules and regulations promulgated by the Commissioner~~ work in any occupation which is deemed hazardous under § 40.1-100 A or regulations promulgated thereunder. However, a child sixteen or seventeen years of age may be employed in certain such occupations as part of a work-training program in accordance with rules and regulations promulgated by the Commissioner. No child shall work in a

work-training program except pursuant to a written agreement which shall provide: (1) that the work of such child shall be incidental to his training, shall be intermittent and for short periods of time and shall be under the direct and close supervision of a competent and experienced person; (2) that safety instruction shall be given by the school and correlated ~~by-the-employer-with~~ on-the-job training given by the employer; and (3) that a schedule of organized and progressive work processes to be performed shall have been prepared. Such written agreement shall set forth the name of the child so employed and shall be signed by the employer and the coordinator of schools having jurisdiction. Copies of such agreement shall be retained by the school and the employer, and a copy thereof shall be filed with the Department.

Any such work-training certificate or written agreement may be revoked at any time that it shall appear that reasonable precautions for the safety of such child have not been observed.

COMMENT: Changes incomplete listing of hazardous occupations in this section to a comprehensive reference to such occupations (§ 40.1-100A); clarifies a current practice which permits sixteen- and seventeen-year-old children to be employed in any occupation deemed hazardous under § 40.1-100A only when employed as part of a work-training program or a voluntary apprenticeship.

§ 40.1-92. Issuance of 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. In lieu of a personal appearance, such parent, guardian, or custodian may submit a notarized statement granting permission for the employment of the child. 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.

COMMENT: Provides that an employment certificate may be issued to a child if it is issued to such child in person by an issuing officer, regardless of the location. Currently, the certificate must be issued in the city or county in which the child is to be employed; provides that a parent, guardian, or custodian of a child may submit a notarized statement granting permission for the employment of such child in lieu of personally appearing with the child.

§ 40.1-93. Proof required 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}~~-1. Except for work coming within one of the exceptions in § ~~40-1-79-40.1-79.01~~, a statement signed by the prospective employer, or someone duly authorized on his behalf, stating that he expects to give such child present employment, setting forth the specific nature of the occupation in which he intends to employ such child, and the number of hours per day and of days per week which said child shall be employed and of the period for lunch.

~~{2}~~-2. Proof of age as provided in § 40.1-94.

~~{3}~~-A certificate of physical fitness as provided in § 40-1-95.--

COMMENT: Deletes reference to certificate of physical fitness requirement in § 40.1-95, which is proposed for repeal. Although some subcommittee members were not in favor of this amendment, it was approved by the majority of the subcommittee. The Department of Labor and Industry recommended this change because it is often problematic (in terms of the inconvenience and expense) for parents to take the child to a physician for a physical examination.

§ 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~~-40.1-79.01, the certificate shall show the name and address of the employer for whom and the nature of the specific occupation in which the employment certificate authorizes the child to be employed and shall be valid only for the occupation so designated. It shall bear a number, shall show the date of its issue ~~and the date of the physical~~, 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.

COMMENT: Makes a technical change to a cross-referenced section and deletes a reference to a physical examination (see § 40.1-93 Comment).

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

~~(1)~~-1. In any mine, quarry, tunnel, underground scaffolding work; in or about any plant or establishment manufacturing or storing

explosives or articles containing explosive components; in any occupation involving exposure to radioactive substances or to ionizing radiations including X-ray equipment;

~~(2)~~-2. At operating or assisting to operate any grinding, abrasive, polishing or buffing machine, any power-driven metal forming, punching or shearing machine, power-driven bakery machine, power-driven paper products machine, any circular saw, band saw or guillotine shear, or any power-driven woodworking machine;

~~(3)~~-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)~~-4. In any capacity in preparing any composition in which dangerous or poisonous chemicals are used;

~~(5)~~-5. In any capacity in the manufacturing of paints, colors, white lead, or brick tile or kindred products, 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;

~~(7)~~-6. In any capacity in or about excavation, demolition, roofing, wrecking or shipbreaking operations;

~~(8)~~-7. As a driver or a helper on a truck or commercial vehicle of more than two axles. The provisions of this paragraph shall not apply to the drivers of school buses;

~~(9)~~-8. In logging or sawmilling, or in any lath mill, shingle

mill or cooperage-stock mill, or in any occupation involving slaughtering, meatpacking, processing or rendering;

~~(10)~~-9. In any occupation determined and declared hazardous by rules and regulations promulgated by the Commissioner of Labor and Industry.

Notwithstanding the provisions of this section, children sixteen years of age or older who are serving a voluntary apprenticeship as provided in Chapter 6 (§ 40.1-117 et seq.) of this title may be employed in any occupation in accordance with rules and regulations promulgated by the Commissioner.

~~(B)~~, ~~(C)~~ ~~{Repeated:}~~

~~(D)~~-No-B. Except as part of a regular work-training program in accordance with §§ 40.1-88 and 40.1-89, no child under sixteen years of age shall be employed, permitted or suffered to work:

~~(1)~~-1. In any manufacturing or mechanical establishment, in any commercial cannery; in the operation of any automatic passenger or freight elevator; in any dance studio; or in any hospital, nursing home, clinic, or other establishment providing care for resident patients as a laboratory helper, therapist, orderly, or nurses' aid ~~r-~~
or-at-any-veterinary-hospital; in the service of any veterinarian while treating farm animals or horses; in any warehouse; in processing work in any laundry or dry cleaning establishment; in any undertaking establishment or funeral home; in any curb service restaurant, in hotel and motel room service; in any brick, coal or lumber yard or ice plant or in ushering in theaters. Children fourteen years of age or more may be engaged in office work of a clerical nature in bona fide office rooms in the above types of establishments.

~~(2)~~-2. In any scaffolding work or construction trade; or in any

outdoor theater, cabaret, carnival, fair, floor show, pool hall, club, or roadhouse; or as a lifeguard at a beach.

~~(B)~~-C. Children fourteen years of age or more may be employed by dry cleaning or laundry establishments in branch stores where no processing is done on the premises, and in hospitals, nursing homes, and clinics where they may be engaged in kitchen work, tray service or room and hall cleaning. Children fourteen years of age or more may be employed in bowling alleys completely equipped with automatic pin setters, but not in or about such machines, and in soda fountains, restaurants and hotel and motel food service departments. Children fourteen years of age or more may work as gatekeepers and in concessions at swimming pools and may be employed by concessionaires operating on beaches where their duties and work pertain to the handling and distribution of beach chairs, umbrellas, floats and other similar or related beach equipment.

~~(F)~~-A-person-under-eighteen-years-of-age-shall-not-perform-in-or-be-a-subject-of-sexually-explicit-visual-material.-As-used-in-this-paragraph-"sexually-explicit-visual-material"-means-a-picture,-photograph,-drawing,-sculpture,-motion-picture-film-or-similar-visual-representation-which-is-obscene-for-children,-as-defined-in-S-10-2-374-1,-and-which-depicts-nudity,-sexual-excitement,-sexual-conduct,-sexual-intercourse-or-sadomasochistic-abuse,-as-defined-in-S-10-2-390,-or-a-book,-magazine-or-pamphlet-which-contains-such-a-visual-representation.-An-undeveloped-photograph-or-similar-visual-material-may-be-sexually-explicit-material-notwithstanding-that-processing-or-other-action-is-necessary-to-make-its-sexually-explicit-content-apparent.-A-person-who-employs,-permits-or-suffers-a-person-to-be-employed-or-work-in-violation-of-this-subsection-(F)-is-guilty-of-a-

~~Class-6-felony---~~

COMMENT: Makes several technical and stylistic changes to this section, including moving subsection F to a new section numbered § 40.1-100.2 because it is more appropriate as a separate section; permits a fourteen- or fifteen-year-old child to work in the service of a veterinarian, except during treatment of farm animals or horses.

§ 40.1-100.1. No person shall employ, suffer, or permit a child to work in any gainful occupation that exposes such child to a recognized hazard capable of causing serious physical harm or death to such child. Any person violating this section shall be subject to a civil monetary penalty in accordance with § 40.1-113 of this chapter.

COMMENT: Creates a general duty clause for situations which are capable of causing serious physical harm or death and in which an employer has endangered or injured a child by violating recognized industry standards. Violations of this section are punishable in accordance with the penalty prescribed in § 40.1-113.

§ 40.1-100.2. Employment involving sexually explicit visual material prohibited.--A person under eighteen years of age shall not perform in or be a subject of sexually explicit visual material. As used in this section, "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film or similar visual representation which is obscene for children, as defined in § 18.2-374.1, and which depicts nudity, sexual excitement, sexual conduct, sexual intercourse or sadomasochistic abuse, as defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other action is necessary to make its sexually explicit content apparent. A person who employs, permits or suffers a person to be employed or work in violation of this section is guilty of a Class 6 felony.

COMMENT: Moved from subsection F of § 40.1-100 because it is

more appropriate as a separate section (the language is identical).

§ 40.1-101. Qualifications as to theaters.--Notwithstanding the provisions of ~~subsections (A) through (E) of~~ § 40.1-100 and 40.1-100.1, a child under sixteen years of age, whether a resident or nonresident of the Commonwealth, may be employed, permitted or suffered to participate in the presentation of a drama, play, performance, concert or entertainment, provided the management of the theater or other public place where such performance is to be held in the Commonwealth shall secure a permit from the Commissioner; provided, ~~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 noncommercial programs.

COMMENT: Makes technical correction to a cross-referenced section and makes the general duty clause applicable to employment by children in the presentation of plays, concerts, and other public entertainment.

§ 40.1-103. Cruelty and injuries to children.--It shall be unlawful for any person employing or having the custody of any child willfully or negligently to cause or permit the life of such child to be endangered or the health of such child to be injured, or willfully or negligently to cause or permit such child to be placed in a situation that its life, health or morals may be endangered, or to cause or permit such child to be overworked, tortured, tormented, mutilated, ~~or cruelly~~ beaten or cruelly treated. Any person violating this section shall be guilty of a ~~misdemeanor~~ Class 6 felony.

COMMENT: Changes the penalty for a violation of this section from a misdemeanor to a Class 6 felony.

§ 40.1-109. Newspaper carriers on regular routes; hours;

newspaper carrier certificates.--Notwithstanding the other provisions of this chapter, any child between twelve and sixteen years of age may daily engage in the occupation of distributing newspapers on regularly established routes between the hours of four o'clock ante meridian and seven o'clock post meridian, excluding the time public schools are actually in session. ~~The publisher of the newspaper which any such child 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 child, 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 child does not appear physically fit from his health record or that in the opinion of the division superintendent his school record indicates that his schoolwork is not compatible with such occupation.--Such carrier child shall carry such certificate on his person at all times that he is engaged in his duties.--~~

COMMENT: Deletes requirement that a newspaper carrier must be issued a newspaper carrier certificate (by the publisher of the newspaper).

§ 40.1-112. Solicitation generally.-- ~~(1)-~~A. In order to provide for enforcement of the child labor laws and the protection of employees, it shall be unlawful for any person, firm or corporation, except a nonprofit organization, to engage in or to employ any person for, or suffer or permit any person in his employment ~~to engage in,~~ to work in any trade in any street or public place, including, but not limited to candy sales, 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)~~-B. Such permits shall be valid from the date of issuance until June 30 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 Commonwealth.

~~(3)~~-C. Each permittee shall maintain such records as may be prescribed by the Commissioner showing the name, residence address and age of each employee, the hours worked by each employee, the place where such work was performed, and the compensation paid and payable to such employee. Such records shall be available for inspection by the Commissioner or a representative designated by him during business hours.

~~(4)~~-~~{Repeated-}~~-

~~(4-1)~~-D. No child shall be employed or permitted to work by or for any permittee unless all the following conditions are satisfied:

~~(a)~~-1. The child is at least sixteen years of age; and-

~~(b)~~-2. The permittee has a permanent business address within this Commonwealth; and

~~(c)~~-~~{Repeated-}~~-

~~(d)~~-3. The child works at all times under the immediate supervision of an adult ~~and-~~ and-

~~(e)~~-~~{Repeated-}~~-

~~(F)~~-E. No child shall be required, permitted or directed to make any false statement representing himself, his employer or products or services in his employment.

(5)-F. Any person violating any provision or condition of this section shall be guilty of a Class 2-1 misdemeanor for each such violation. Any violation of this section by a permittee or with his knowledge and consent shall in addition be grounds for revocation of the permit.

COMMENT: Combines the provisions of § 40.1-83, which is proposed for repeal, into this section; exempts non-profit organizations from the provisions of this section; changes the penalty for violation of this section from a Class 2 to a Class 1 misdemeanor; makes several technical amendments.

§ 40.1-113. Child labor offenses; civil penalties.--A. 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 §§ ~~40-1-100~~-~~(F)~~-40.1-100.2, 40.1-103 and 40.1-112, shall be subject to a civil penalty not to exceed ~~\$250~~-\$1,000 for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within fifteen days after receipt of such notice the person charged with the violation notifies the Commissioner by certified mail that he intends to contest the proposed penalty before the appropriate general district court.

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

That §§ 40.1-79, 40.1-80, 40.1-83, 40.1-90, 40.1-91, 40.1-95, 40.1-98, 40.1-99, 40.1-105, and 40.1-111 are repealed.

COMMENT: Changes the maximum civil money penalty per violation of this chapter from \$250 to \$1,000.

COMMENT: Repeal of §§ 40.1-99, 40.1-105, and 40.1-111 eliminate exemptions for certain types of employment that are not exempted under federal law.

APPENDIX C

DRAFT

Members of the Virginia Congressional Delegation:

I am writing to you as chairman of a special legislative subcommittee which has examined Virginia's child labor laws over the past year. We would like to express our desire that Congress request the Department of Labor to review certain federal limitations on hours of employment for fourteen- and fifteen-year-old children.

In our comprehensive study of the Commonwealth's child labor laws, the subcommittee recognized that the child labor provisions of the Fair Labor Standards Act are applicable to a great majority of Virginia's working children. The subcommittee heard considerable testimony indicating that it would be beneficial to the state's employers, administrators, parents, and children to have Virginia's hours requirements mirror those contained in regulations promulgated by the Secretary of Labor pursuant to the FLSA.

The subcommittee has recommended legislation to the 1991 Session of the General Assembly which would require state regulations regarding hours of employment for children under sixteen to be the same as federal standards. However, the subcommittee members believe that federal regulations which limit the hours of work for fourteen- and fifteen-year-old children to three hours per day on a school day and to no later than 7 p.m. between Labor Day and June 1 may be too restrictive.

With these standards, fourteen- and fifteen-year-old children may be faced with few work opportunities because many employers will not hire the children due to the limitations on the hours that such children may work. For example, under current federal law, a fifteen-year-old is not permitted to work more than three hours on a Friday or past 7 p.m. on weekends. The members of the subcommittee believe that employment by Virginia's children should be encouraged because it fosters a positive work ethic and provides positive outlets for our young people.

We urge you to recommend that Congress request the United States Department of Labor to review its regulations which too severely limit the permitted hours of employment for fourteen- and fifteen-year-old children.

Sincerely,

Joan H. Munford

APPENDIX D

The following statement was submitted by subcommittee member Bernard S. Cohen of Alexandria:

While I am in agreement with the findings and recommendations of the subcommittee, I would make the prohibitions against working with hazardous machinery and exposure to hazardous substances applicable to children under eighteen employed in agricultural occupations. I agree with the following testimony of Dr. Susan H. Pollack and Dr. Philip J. Landrigan:

"The common denominators in many cases of injury to working children are inexperience and machinery, from arm-amputating meat and bakery slicers to chest crushing supermarket box-crushers. Work with hazardous machinery is prohibited under Federal law for those under age eighteen because of these hazards. It makes little medical or public health sense to prohibit children in the retail, service, and manufacturing sectors of industry from working on machinery because it is too dangerous, but to then allow even younger children in agriculture to work on machinery, particularly when agriculture is recognized to be the most hazardous occupation for adults. Thus, we support the prohibition on work with hazardous machinery for all children under eighteen, including those employed in the agricultural sector...

Another major hazard for children employed in agriculture is pesticides [which] can be inhaled and absorbed through the skin, causing people to be poisoned...It is imperative that adequate reentry times (in order for pesticides to dry after spraying) exist and be enforced if we are to protect agricultural workers, including children, from exposure to hazardous substances, which is required under Federal law."

-- Written testimony of Susan H. Pollack, M.D. and Philip J. Landrigan, M.D., M.Sc. of the Division of Environmental and Occupational Medicine, Mount Sinai School of Medicine, New York, New York, to the Special Subcommittee Studying Child Labor Laws, November 14, 1990.

APPENDIX F

HAZARDOUS OCCUPATIONS IN AGRICULTURE

The Secretary of Labor has found and declared that the following occupations in agriculture are hazardous for minors under 16 years of age. No minor under 16 may be employed at any time in these occupations except as exempt (See page 5).

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking-type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

(ii) Fork lift;

(iii) Potato combine; or

(iv) Power-driven circular, band, or chain saw.

(4) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

(6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(8) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. 136 et seq.) as Toxicity Category I, identified by the word "Danger" and/or "Poison" with skull and crossbones; or Toxicity Category II, identified by the word "Warning" on the label;

(10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

(11) Transporting, transferring, or applying anhydrous ammonia.