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HOUSE BILL NO. 2790

Offered January 17, 2003

A BILL to amend and reenact §§ 40.1-22, 40.1-49.3, 40.1-51, and 40.1-51.1 of the Code of Virginia, relating to blood-borne pathogen hazards in the workplace; needleless systems and engineered sharps injury protection.

Patrons—Brink and Amundson

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-22, 40.1-49.3, 40.1-51, and 40.1-51.1 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

(5)E. The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions established under this title. The Commissioner shall enforce such rules and regulations.

All such rules and regulations shall be designed to protect and promote the safety and health of such employees. In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard, which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596).

In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. Such standards when applicable to products which are distributed in interstate commerce shall be the same as federal standards unless deviations are required by compelling local conditions and do not

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59 unduly burden interstate commerce.

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

62 ~~(6a)~~G. The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et
63 seq.) of Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a
64 newspaper of general circulation, published in the City of Richmond, Virginia, if it determines that
65 employees are exposed to grave danger from exposure to substances or agents determined to be toxic or
66 physically harmful or from new hazards, and that such emergency standard is necessary to protect
67 employees from such danger. The publication mentioned herein shall constitute notice that the Board
68 intends to adopt such standard within a period of six months. The Board by similar publication shall
69 prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the
70 adoption of a permanent standard. The emergency temporary standard shall expire within six months or
71 when superseded by a permanent standard, whichever occurs first, or when repealed by the Board.

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

79 *1. In compliance with subsection G, the Board shall provide for an emergency temporary standard,*
80 *which shall be followed by the adoption of a permanent standard, that establishes a standard for*
81 *occupational exposure to blood-borne pathogens that includes requirements for engineered sharps injury*
82 *protection and needleless systems and may include other mechanisms for preventing sharps injuries and*
83 *exposure prone incidents, such as training and education, vaccination recommendations, strategic*
84 *handling and placement of sharps containers, and use of personal protective equipment.*

85 § 40.1-49.3. Definitions.

86 For the purposes of §§ 40.1-49.4, 40.1-49.5, 40.1-49.6, 40.1-49.7, and 40.1-51.1 through 40.1-51.3
87 the following terms shall have the following meanings:

88 "Commission" means the Virginia Workers' Compensation Commission.

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

91 "Employee" means an employee of an employer who is employed in a business of his employer.

92 "Employer" means any person or entity engaged in business who has employees, but does not
93 include the United States.

94 "*Engineered sharps injury protection*" means a physical attribute (i) built into a needle device used
95 for withdrawing body fluids, accessing a vein or artery or administering medications or other fluids that
96 effectively reduces the risk of exposure to blood-borne pathogens by mechanisms such as barriers,
97 blunting, encapsulation, withdrawal, retraction, destruction or any other effective protection; or (ii) built
98 into any other type of needle device or into a nonneedle sharp that effectively reduces the risk of
99 exposure to blood-borne pathogens.

100 "*Needleless system*" means a device, which does not utilize needles, that may be used for (i) the
101 withdrawal of body fluids after venous or arterial access has been established; (ii) the administration of
102 medication or fluids; or (iii) any other procedure that includes a risk of exposure to blood or other
103 body fluids and, thereby, a risk of exposure to blood-borne pathogens.

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

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

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

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

117 § 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations; duties of
118 Corporation Commission not affected.

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

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

B. The State Health Commissioner shall, in the exercise of the responsibility conferred in subsection A, advise and provide technical aid to the Commissioner of Labor and Industry and to the Safety and Health Codes Board concerning the emergency temporary standard and the subsequent adoption of a permanent standard that relates to occupational exposure to blood-borne pathogens and the use of engineered sharps injury protection and needleless systems. The State Health Commissioner's technical aid shall include the compilation and maintenance of a list of available needleless systems and sharps with engineered sharps injury protection that may be developed from existing sources and is made available to assist employers in complying with the requirements of this chapter and the Safety and Health Codes Board's occupational exposure to blood-borne pathogen standard.

This act shall not be interpreted to change, affect, or transfer to the Department or to the Commissioner the duties imposed upon the State Corporation Commission by §§ 27-61 through 27-90.

§ 40.1-51.1. Duties of employers.

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

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

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

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons as prescribed in the rules and regulations of the Safety and Health Codes Board.

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

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

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

H. Each employer having employees at risk for exposure to blood-borne pathogens through injury with sharps, including needles, shall (i) conduct product evaluations of needleless systems and sharps with engineered sharps injury protections and (ii) establish an evaluation committee, at least half of whom shall be front-line health care workers.

The product evaluations shall include, but shall not be limited to, such devices as I.V. catheters; I.V. access devices and I.V. connectors; vacuum-tube blood collection devices; blood-drawing devices such as phlebotomy needles and tube holders, butterfly-type devices and syringes; syringes used for purposes other than blood drawing; suture needles; scalpel devices; and any other category of device having a sharps injury risk.

The evaluation committee shall represent all services and medical specialties in the facility and shall be charged with developing and revising as necessary a written exposure control plan that (i) identifies effective existing needleless systems and sharps with engineered sharps injury protection, (ii) determines by means of objective product evaluation criteria when use of such devices could jeopardize patient or employee safety and is not indicated for specific medical procedures, and (iii) includes a procedure for maintaining a sharps injury record with entries for incident dates and times, type and brand of the involved sharp and whether the sharp had engineered sharps injury protection and the status of such engineered sharps injury protection at the time of the incident, a detailed description of the incident that includes the employee's position, the location in the facility in which the incident occurred, the relevant procedure, the anatomical location of employee's injury, and an analysis of how the incident could have

182 *been prevented.*

183 **2. That the Safety and Health Codes Board shall promulgate regulations to implement the**
184 **provisions of this act to be effective within 280 days of its enactment.**