

# VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

## CHAPTER 41

*An Act to amend and reenact §§ 32.1-227, 32.1-228, 32.1-229, 32.1-229.01, 32.1-229.1, 32.1-229.2, 32.1-232.1, 32.1-233, 32.1-235, and 32.1-238 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-228.1, 32.1-229.3, and 32.1-234.1, relating to declaring the Department of Health the state radiation control agency.*

[S 514]

Approved February 26, 2008

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-227, 32.1-228, 32.1-229, 32.1-229.01, 32.1-229.1, 32.1-229.2, 32.1-232.1, 32.1-233, 32.1-235, and 32.1-238 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-228.1, 32.1-229.3, and 32.1-234.1 as follows:**

**§ 32.1-227. Definitions.**

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

1. "By-product material" means:

~~any~~ *a. Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;*

*b. The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily of its source material content;*

*c. Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;*

*d. Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and*

*e. Any discrete source of naturally occurring radioactive material (NORM), other than source material that the Nuclear Regulatory Commission (NRC), in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security, that is extracted, or converted after extraction, for use for a commercial, medical, or research activity.*

2. "General license" means a license effective under regulations promulgated by the Board without the filing of an application with the Department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.

2. 3. "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

3. 4. "Person" includes, in addition to the entities enumerated in subdivision 4 of § 32.1-3, an institution, agency and political subdivision of this Commonwealth and of any other state but does not include the United States Nuclear Regulatory Commission or any successor thereto or any federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, department of the Commonwealth other than the Department of Health, political subdivision of the Commonwealth, any other state or political subdivision or department thereof, and any legal successor, representative, agent, or department of the foregoing, but not including federal government agencies.

4. 5. "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to the safety and health of any citizen of this Commonwealth.

5. 6. "Radioactive material" means any material that emits ionizing radiation spontaneously.

6. 7. "Source material" means (i) ~~uranium, thorium, or any other material which the United States Nuclear Regulatory Commission, or any successor thereto, has determined to be source material; or (ii) ores containing one or more of the foregoing materials in concentrations determined by the United States Nuclear Regulatory Commission or any successor thereto to be source material~~ *uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.*

7. 8. "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or

(ii) any material artificially enriched by any of the foregoing but not including source material.

9. "Specific license" means a license, issued to a named person upon application filed under the regulations promulgated pursuant to this article, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices or equipment utilizing, radioactive material.

§ 32.1-228. Exemption.

The provisions of this article shall not apply to radioactive materials or facilities, including nuclear reactors that are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.

§ 32.1-228.1. Department designated state radiation control agency; powers and duties.

A. The Department of Health is hereby designated as the state radiation control agency. The Commissioner of Health may employ, compensate, and prescribe the duties of such individuals as may be necessary to discharge the responsibilities imposed by this article.

B. The Department shall:

1. Collect and disseminate information relating to control of sources of radiation including:

a. Establishing and maintaining a file of all applications for, issuances, denials, transfers, renewals, modifications, suspensions and revocations of, and amendments to all licenses;

b. Establishing and maintaining a file of registrants possessing sources of radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto; and

c. Establishing and maintaining a file of all agency rules and regulations related to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

2. Establish a database of registered and certified X-ray machines, which shall include but not be limited to the name of the owner or operator and the location of the machine.

3. Pursuant to its powers enumerated in § 32.1-25, provide for scheduled and random unannounced inspections of facilities and physicians' offices that provide mammography services to ensure compliance with laws, regulations, or conditions specified by the Board.

4. Establish forms for the periodic Radiation Inspection Report.

5. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management.

6. Maintain, revise as needed, and make available to the public a list of persons who have been listed as proficient to offer screening, testing, or mitigation for radon by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association, or the National Radon Safety Board Certified Radon Professional Program, or any other proficiency program acceptable to the Board of Health.

7. Publish and make available a list of qualified inspectors of X-rays.

§ 32.1-229. Powers and duties of the Board.

A. The Board is authorized to shall:

1. Establish a program of effective regulation of sources of radiation for the protection of the public health and safety, including a program of education and technical assistance relating to radon that is targeted to those areas of the Commonwealth known to have high radon levels.

2. Establish a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.

3. Establish a program to permit maximum utilization of sources of radiation consistent with the public health and safety.

4. ~~Adopt~~ Promulgate regulations providing for (i) general or specific licenses to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and of information with respect thereto, and (iii) regulation of by-product, source and special nuclear material.

5. Encourage, participate in and conduct studies, investigations, training, research and demonstrations relating to control of sources of radiation.

6. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the Department of Emergency Management.

7. ~~Maintain~~, revise as necessary, and make available to the public a list of persons that have been listed as proficient to offer screening, testing or mitigation for radon by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health.

8. 6. Establish fee schedules, which shall not exceed comparable federal Nuclear Regulatory Commission fees, for the licensure and inspection of radioactive materials.

9. ~~Adopt~~ regulations for the imposition of civil penalties pursuant to § 32.1-27 C for violations of law, regulation or licensure conditions by persons licensed for the use or possession of radioactive

materials.

~~10.~~ 7. Establish guidelines to require the licensed facilities or physicians' offices where mammography services are performed to offer to the patient, prior to departure, development of such films to ensure integrity and quality of the film. When film developing is not available or the patient chooses not to wait, the patient shall be notified within two business days if another mammogram is necessary. This requirement does not imply or require that a diagnostic opinion be made at the time of the mammogram. The interpreting physician may require that the mammogram be retaken if, in the opinion of the physician, the study is of inadequate quality.

8. *Issue such orders or modifications thereof as may be necessary in connection with proceedings under this title.*

B. The Board shall require registration, inspection and certification for all diagnostic and therapeutic X-ray machines used in the healing arts. In addition, the Board may require the registration, inspection and certification of other machines emitting radiation or utilizing radiation for patients, consumers, workers or the general public, except those machines operated by remote control which are not accessible to human beings during operation.

C. Pursuant to its powers enumerated in § 32.1-25, the Board shall provide for scheduled and random unannounced inspections of facilities and physicians' offices that provide mammography services to ensure compliance with laws, regulations or conditions specified by the Board.

D. The Board shall require reporting to both the Department and the Virginia Department of State Police immediately if any radioactive materials, including sources of ionizing radiation approved by the Federal Food and Drug Administration for the treatment of foods pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), cannot be accounted for within 24 hours. Such reporting shall only be necessary when required by the United States Nuclear Regulatory Commission. Except as provided in this subsection, a report submitted pursuant to this subsection shall be confidential and shall not be a public record pursuant to the Freedom of Information Act (§ 2.2-3700 et seq.). The Department shall cooperate and may share information submitted to it pursuant to this subsection with the Department of Emergency Management, United States Nuclear Regulatory Commission, United States Food and Drug Administration, and state, local and federal law-enforcement agencies, as appropriate. The Department or the Virginia Department of State Police may make public all or part of any report made or other information obtained, pursuant to this section (i) where the release of such report or information may assist in the prevention of imminent harm to public health or safety, or (ii) where the release of such report or information may be useful for education of the public on health, safety or homeland defense issues. Any unauthorized disclosure of reports made pursuant to this subsection shall be subject to the penalties of § 32.1-27.

§ 32.1-229.01. Companies listed as proficient to perform radon screening, testing or mitigation; compliance.

A. No person shall conduct or offer to conduct any radon screening, testing or mitigation in the Commonwealth unless he has been listed as proficient by the United States Environmental Protection Agency, the National Radon Measurement Proficiency Program of the National Environmental Health Association or the National Radon Safety Board Certified Radon Professional Program or any other proficiency program acceptable to the Board of Health to offer such screening, testing or mitigation.

For the purposes of this article, "person" shall be defined as provided in § 1-230.

B. Radon professionals listed as proficient pursuant to subsection A shall comply with the radon mitigation and testing standards outlined in the Environmental Protection Agency's publication, EPA 402-R-93-078, as revised, or the American Society for Testing and Materials (ASTM International) Standard, E-2121-02, or any other radon testing and mitigation standards accepted by the Environmental Protection Agency and the Board.

§ 32.1-229.1. Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors.

All X-ray machines shall be registered with the Board of Health, and inspected and certified as meeting the standards established pursuant to its regulations. The inspections shall be conducted periodically on a schedule prescribed by the Board.

The Board shall notify each registrant by September 1, 1987, of the date when the compliance with the schedule shall be required. The Board may also require random unannounced, follow-up inspections of machines which were inspected by private inspectors in order to maintain quality control.

Inspections may be performed by personnel of the Department of Health or by private inspectors. Inspections conducted by the private inspectors shall be conducted in conformance with the regulations of the Board and reports on these inspections shall be filed by the registrant with the Commissioner on forms prescribed by the Board.

Every owner or operator of an X-ray machine shall have his machine inspected according to the Board's schedule by a private inspector or a Department of Health inspector. Following inspection, the test results shall be analyzed by the Department of Health, which shall issue a certificate when the data indicates the machine meets the Board's standards. If the machine does not meet the Board's standards, the certification may be denied. If the certification is denied, the machine shall not be used for

treatment, diagnosis or evaluation of patients, whether human or animal, until the standards of the Board have been met. A copy of the certificate shall be displayed by the registrant in a conspicuous place in close proximity to the X-ray machine.

Every owner or operator of an X-ray machine shall register and request an initial inspection by a private inspector or a Department of Health inspector no later than thirty days after the installation of the equipment. Subsequent inspections shall be made periodically in accordance with a schedule promulgated by the Board. In the event of changes in or installation of new equipment during the last ninety days of a period for which an inspection has been made no interim inspection shall be required.

In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Board of Health shall promulgate rules and regulations to:

1. Establish fee schedules for registration of machines, for inspections of X-ray machines by Department of Health personnel; however, no fee shall be charged for inspections initiated by the Department;

2. Set criteria for qualifications to be listed as a private inspector and publish a list of such inspectors;

3. Establish forms for the periodic Radiation Inspection Report;

4. Establish the schedule for inspections;

5. Set standards for certification of X-ray machines;

6. Establish a database of registered and certified X-ray machines which shall include, but not be limited to, the name of the owner or operator and the location of the machine; and

7. Act upon such other matters as the Board deems appropriate to protect the health and safety of the patients, workers and the general public.

The provisions of this section and of §§ 32.1-229 and 32.1-229.2 relating to X-ray machines and machines emitting or utilizing radiation shall not apply to devices used or bought for use primarily for personal, family or household purposes.

A. All X-ray machines shall be registered with the Department.

B. Every owner or operator of an X-ray machine used in the healing arts shall request an initial inspection by a private inspector or a Department inspector no later than 30 days after the installation of the equipment.

Inspections shall be performed periodically on a schedule prescribed by the Board. The Department may also require random, unannounced, follow-up inspections of machines that were inspected by private inspectors in order to maintain quality control. In the event of changes in or installations of new equipment during the last 90 days of a period for which an inspection has been made, no interim inspection shall be required. In addition, the Department may require the inspection and certification of other machines emitting radiation or utilizing radiation for patients, consumers, workers, or the general public.

Inspections shall be performed by Department personnel or by private inspectors only. Inspections conducted by private inspectors shall be conducted in conformance with the regulations of the Board and reports on these inspections shall be filed by the registrant with the Department on forms prescribed by the Department. Results of all inspections shall be reviewed by the Department.

C. The Department shall issue a certificate for a diagnostic or therapeutic X-ray machine when the results of the inspection indicate the machine meets the Board's standards. If the machine does not meet the Board's standards, the certification may be denied. If the certification is denied, the machine shall not be used for treatment, diagnosis, or evaluation of patients, whether human or animal, until the standards of the Board have been met. A copy of the certificate shall be displayed by the registrant in a conspicuous place in close proximity to the X-ray machine.

D. The Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), promulgate such regulations as the Board deems necessary to protect the health and safety of health care workers, patients, and the general public, including but not limited to regulations to:

1. Fee schedules for registration of X-ray machines;

2. Schedule for inspections of X-ray machines;

3. Fee schedules for inspections of X-ray machines by Department personnel; however, no fee shall be charged for inspections initiated by the Department;

4. Standards for certification of X-ray machines; and

5. Qualifications for private inspectors.

E. The provisions of this section and of §§ 32.1-229 and 32.1-229.2 relating to X-ray machines and machines emitting or utilizing radiation shall not apply to devices purchased or used primarily for personal, family, or household purposes.

§ 32.1-229.2. Costs of inspection conducted by Health Department; fees to be used to support program.

In order to minimize competition with the private sector, the fee schedule developed by the Board for routine inspections of X-ray machines by Department of Health inspectors shall include all reasonable costs of such inspections. The fees collected pursuant to ~~§ 32.1-229.1~~ shall be deposited in the general fund.

*§ 32.1-229.3. Licensing of Radioactive Material.*

A. All radioactive material not under the authority of the United States Nuclear Regulatory Commission, and devices or equipment utilizing such material, shall be licensed by the Board. The Board shall promulgate regulations that provide for general or specific licenses. The Board may require registration or licensing of any other source of radiation and may exempt certain sources of radiation, uses of radiation, or users of radiation from the licensing and registration requirements set forth in this article when the Commissioner finds that the exemption of such sources, uses, or users of radiation will not constitute a significant risk to the health and safety of the public. The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with the provisions of this article.

B. Regulations promulgated under this article should provide for recognition of other Agreement State or federal licenses, subject to such requirements as the Board may prescribe.

C. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the Department in conformance with this article and any regulations promulgated by the Board pursuant to this article.

*§ 32.1-232.1. Special Trust Fund for Radioactive Materials Facility Licensure and Inspection created.*

There is hereby created in the Department of the Treasury a special nonreverting fund known as the Special Trust Fund for Radioactive Materials Facility Licensure and Inspection, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. All deposits of fees collected pursuant to *subdivision 6 of § 32.1-229 A* § 8 shall be paid into the Department of the Treasury and credited to the Fund; in addition, the Fund shall consist of such funds as may be appropriated for the purpose of licensure and inspection of radioactive materials facilities, and such gifts, donations, grants, bequests, and other funds as may be received on its behalf. Interest earned on such moneys shall remain in the Fund and be credited to it. Moneys in the Fund shall be used solely to support the Department of Health's program for licensure and inspection of radioactive materials facilities as provided in this article and Board of Health regulations. Disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Commissioner of Health.

*§ 32.1-233. Radiation Advisory Board; composition; duties generally.*

A. The Radiation Advisory Board shall consist of ten appointive members and the ~~seven~~ six ex officio members specified below. The Governor shall appoint to the Advisory Board individuals from industry, labor and agriculture as well as individuals with scientific training in one or more of the following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields. Members of the Advisory Board shall serve at the pleasure of the Governor. The Commissioner shall be an ex officio member and chairman of the Advisory Board; ~~and the~~ The Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Services, the ~~chairman of the State Water Control Board or his designee, the Governor's representative on the Southern Interstate Nuclear Board, the Executive Director of the Department of Waste Management~~ State Coordinator of Emergency Management, the Director of Environmental Quality, and the Director of the Virginia Institute of Marine Science shall be ex officio members of the Advisory Board.

B. The Advisory Board shall meet at least annually and shall:

1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and
2. Make recommendations to the Commissioner and the Board of Health, the ~~Executive Director of the Department of Waste Management~~ Director of Environmental Quality, and the Virginia Waste Management Board and furnish such technical advice as may be required, on matters relating to development, utilization and regulation of sources of ionizing radiation.

*§ 32.1-234.1. Enforcement.*

A. Whenever the Department finds, following inspection and examination, that a source of radiation as constructed, operated, or maintained results in a violation of this article or of any regulations promulgated pursuant to this article, the Department shall:

1. Notify the person in control of the source of radiation as to the nature of the violation; and
2. Specify a time frame for termination or abatement of the violation, including a deadline by which the source of the violation shall be reconstructed, operated, or maintained in compliance with this article and any regulations promulgated pursuant to this article.

B. Upon failure to comply with the time frame specified by the Department for termination or abatement of the violation, the Department may revoke the license, and pursue penalties or enforcement in accordance with § 32.1-27.

C. Whenever, in the judgment of the Department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute an emergency, hazard to health and safety, or a violation of any provision of this article or any rule, regulation, or order issued thereunder, and at

*the request of the Commissioner, the Attorney General may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the Department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.*

*D. In addition to the provisions of § 32.1-27, any person who violates the provisions of this article or any order or regulation adopted pursuant thereto shall, upon a finding by a court of competent jurisdiction, be assessed a civil penalty of not more than \$10,000 for each day of such violation. All penalties arising under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Civil penalties collected pursuant to this section shall be paid into the state treasury and credited to the Radioactive Material Perpetual Care Trust Fund created pursuant to § 32.1-232.*

*E. In addition to the provisions of § 32.1-25, the Department shall have the power to enter at all reasonable times, or in cases of an emergency, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.*

§ 32.1-235. Authority of Governor to enter into agreements with federal government; effect on federal licenses.

A. The Governor is authorized, subject to the appropriation of funds, to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this Commonwealth.

B. Any person who, on the effective date of an agreement under subsection A ~~above~~, *except those exempted under § 32.1-228*, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this article. Such license shall expire either ninety days after receipt of a notice from the ~~Commissioner~~ *Department* of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

§ 32.1-238. Impounding sources of ionizing radiation.

The ~~Commissioner~~ *Department* is authorized, in the event of an emergency *or under other circumstances* constituting a hazard to ~~the public~~ health and safety, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article or any regulations issued thereunder.