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## SENATE BILL NO. 483

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact §§ 40.1-51.26 and 40.1-51.31 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-51.27:1, relating to asbestos workers; reporting violations; penalties for noncompliance.*

Patrons—Favola and Ebbin

Referred to Committee on Commerce and Labor

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

**1. That §§ 40.1-51.26 and 40.1-51.31 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-51.27:1 as follows:**

§ 40.1-51.26. Commissioner of Labor and Industry to enforce laws.

The Commissioner of Labor and Industry shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations of the Board;
2. Receive complaints as to asbestos NESHAP violations *and provide for the confidentiality of complainants as provided in § 40.1-51.27:1;*
3. Hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce regulations pursuant to § 40.1-51.28;
4. Institute legal proceedings, including suits for injunctions for the enforcement of his orders, regulations of the Board, and for the enforcement of penalties;
5. Investigate any violations of this chapter and regulations;
6. Require that asbestos NESHAP records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulation; and
7. Upon presenting appropriate credentials to the owner, operator, or agent in charge:
  - a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth, subject to federal security requirements; and
  - b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Commissioner or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have the power to seek an order compelling such entry or inspection, pursuant to § 40.1-49.9.

§ 40.1-51.27:1. *Complaints as to asbestos NESHAP violations; confidentiality; retaliation prohibited.*

A. *The Commissioner shall maintain a registry of all complaints it receives under this chapter from an employee alleging the existence or imminent threat of an asbestos NESHAP violation. The registry shall include a summary of the substance of each such complaint, a listing of any evidence offered to support the complaint, the date the employer was notified of the complaint, and a notation of the action taken by the Commissioner as a result of the complaint.*

B. *An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, in good faith, files a complaint with the Commissioner alleging the existence or imminent threat of an asbestos NESHAP violation.*

C. *The identity of any employee filing a complaint with the Commissioner under subsection A, and all documentary and other evidence received or maintained by the Commissioner with such complaint, shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be released if (i) the complainant consents in writing to disclosure or (ii) disclosure is required by court order. If the disclosure is necessary for prosecution, the identity of the employee may be disclosed but the employee shall be informed prior to the disclosure.*

D. *An employee who is discharged, disciplined, threatened, otherwise discriminated against, or penalized in violation of subsection B is entitled to:*

1. *Reinstatement to the employee's former position;*
2. *Compensation for wages lost during the period of suspension or termination; and*
3. *Reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.*

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59 *An employee shall be barred from seeking relief under this subsection unless an action is filed in a*  
60 *court of proper jurisdiction not later than one year after the alleged conduct of the employer occurred*  
61 *or was discovered or discoverable by the employee through reasonable diligence. An employee who*  
62 *prevails in an action under this subsection is entitled to recover court costs and reasonable attorney*  
63 *fees.*

64 *E. This section does not permit an employee to make statements or disclosures knowing that they are*  
65 *false or that they are in reckless disregard of the truth.*

66 § 40.1-51.31. Penalties for noncompliance; judicial review.

67 A. The Board is authorized to promulgate regulations providing for the determination of a formula  
68 for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to  
69 subsection B ~~hereof~~, in conformance with the requirements of § 120 of the federal Clean Air Act, as  
70 amended, and any regulations promulgated thereunder. *However, in no event shall the amount of any*  
71 *noncompliance penalty for a violation be less than \$2,000 per violation or exceed \$25,000 for multiple*  
72 *violations.* Any regulations promulgated pursuant to this section shall be in accordance with the  
73 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

74 B. Upon a determination of the amount by the Commissioner, the Commissioner shall petition the  
75 circuit court of the county or city wherein the owner subject to such noncompliance assessment resides,  
76 regularly or systematically conducts affairs or business activities, or where such owner's property  
77 affected by the administrative action is located for an order requiring payment of a noncompliance  
78 penalty in a sum the court deems appropriate.

79 C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court.  
80 All sums collected, less the assessment and collection costs, shall be paid into the general fund of the  
81 state treasury.

82 D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments,  
83 sanctions, or other requirements under this chapter and shall in no way affect any civil or criminal  
84 enforcement proceedings brought under other provisions of this chapter.