

2021 SPECIAL SESSION I

HOUSE SUBSTITUTE

21200710D

HOUSE BILL NO. 2032

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2021)

(Patron Prior to Substitute—Delegate Gooditis)

A BILL to amend and reenact §§ 40.1-2, 40.1-49.3, and 40.1-49.8 of the Code of Virginia, relating to the employees providing domestic service; application of laws applicable to employee safety.

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2, 40.1-49.3, and 40.1-49.8 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-2. Definitions.

As used in this title, unless the context clearly requires otherwise, the following terms have the following meanings:

"Board" means the Safety and Health Codes Board.

"Business establishment" means any proprietorship, firm or corporation where people are employed, permitted or suffered to work, including agricultural employment on a farm.

"Commission" means the Safety and Health Codes Board.

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

"Department" means the Department of Labor and Industry.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs. "Domestic service" does not include work that is irregular, uncertain, or incidental in nature and duration.

"Employ" shall include to permit or suffer to work.

"Employee" means any person who, in consideration of wages, salaries or commissions, may be permitted, required or directed by any employer to engage in any employment directly or indirectly.

"Employer" means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs another to work for wages, salaries, or on commission and shall include any similar entity acting directly or indirectly in the interest of an employer in relation to an employee.

"Female" or "woman" means a female 18 years of age or over.

"Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors, shafts, tunnels, including machinery being operated on farms in connection with the production or harvesting of agricultural products.

§ 40.1-49.3. Definitions.

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 the following terms shall have the following meanings:

"Commission" means the Virginia Workers' Compensation Commission.

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

"Employee" means an ~~employee of an employer~~ individual who is employed in a business of his by an employer.

"Employer" means any person ~~or entity who~~ that (i) is engaged in business or engages an individual to perform domestic service and (ii) has employees, but "Employer" does not include the United States.

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

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

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

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

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§ 40.1-49.8. Inspections of workplace.

In order to carry out the purposes of the occupational safety and health laws of the Commonwealth and any such rules, regulations, or standards adopted in pursuance of such laws, the Commissioner, upon representing appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge of such workplace as described in subdivision ~~(1)~~ of ~~this section~~ 1, or with an appropriate order or warrant:

~~(1)~~ 1. To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed, *including any place where an individual is engaged to perform domestic service*, by an employee of an employer; and

~~(2)~~ 2. To inspect, investigate, and take samples during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.