

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 212

An Act to amend and reenact §§ 9-6.14:4.1, 40.1-51.9:1, 40.1-51.10, 40.1-51.11:1, and 40.1-51.15 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-51.10:1, relating to commerce and trade; fees for boiler and pressure vessel inspections; issuance of certificates.

[H 2055]

Approved March 9, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:4.1, 40.1-51.9:1, 40.1-51.10, 40.1-51.11:1, and 40.1-51.15 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-51.10:1 as follows:

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.
11. The Council on Information Management.
12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.
- 13, 14. [Repealed.]
15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.
17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.
18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.
19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.
20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.
21. The Virginia War Memorial Foundation.
22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to

the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. The Virginia Student Assistance Authorities.

25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

26. The Virginia Small Business Financing Authority.

27. The Virginia Economic Development Partnership Authority.

28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to clause A (ii) of § 59.1-156.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.

2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than

twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by (i) *the Department of Labor and Industry pursuant to Title 40.1* and (ii) the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to § 45.1-161.82.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that

regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 40.1-51.9:1. Examination of inspectors; certificate of competency required.

A. All applicants for the position of inspector authorized by § 40.1-51.9 shall be required to have successfully completed an examination monitored by the Examining Board and to have received a certificate of competency from the Commissioner prior to commencing their duties. A fee of ~~fifty dollars~~ *as set under § 40.1-51.15 A* shall be charged each applicant taking the inspector's examination.

B. Each inspector holding a valid certificate of competency and who conducts inspections, as provided by this chapter, shall be required to obtain an identification card biennially, not later than June 30 of the year in which the identification card is required. Application for the identification card shall be made on forms furnished by the Department upon request. Each application shall be submitted to the Department, accompanied by a post-office money order or check drawn to the order of the Treasurer of Virginia in the amount of ~~ten dollars~~ *as set under § 40.1-51.15 A*.

§ 40.1-51.10. Right of access to premises; certification and recertification; inspection requirements.

A. The Commissioner, his agents or special inspectors shall have free access, during reasonable hours to any premises in the Commonwealth where a boiler or pressure vessel is being constructed, operated or maintained, or is being installed to conduct a variance review, an owner-user inspection agency audit, an emergency repair review, an accident investigation, a violation follow-up, and a secondhand or used boiler review for the purpose of ascertaining whether such boiler or pressure vessel is being constructed, operated or maintained in accordance with this chapter.

B. On and after January 1, 1973, no boiler or pressure vessel used or proposed to be used within this Commonwealth, except boilers or pressure vessels exempted by this chapter, shall be installed, operated or maintained unless it has been inspected by the Commissioner, his agents or special inspectors as to construction, installation and condition and shall be certified. A ~~twenty-dollar~~ *fee as set under § 40.1-51.15 A* shall be charged for each inspection certificate issued. In lieu of such fees both for certification and recertification, an authorized owner-user inspection agency shall be charged annual filing fees as set forth in ~~§ 40.1-51.11:1~~ *under § 40.1-51.15 A*.

C. Recertification shall be required as follows:

1. Power boilers and high pressure, high temperature water boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible;

2. Heating boilers shall receive a certificate inspection biennially;

3. Pressure vessels subject to internal corrosion shall receive a certificate inspection biennially;

4. Pressure vessels not subject to internal corrosion shall receive a certificate inspection at intervals set by the Board, but internal inspection shall not be required of pressure vessels, the content of which are known to be noncorrosive to the material of which the shell, heads or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the Board;

5. Nuclear vessels within the scope of this chapter shall be inspected and reported in such form and with such appropriate information as the Board shall designate;

6. A grace period of two months beyond the periods specified in subdivisions 1, 2, 3 and 4 of this subsection may elapse between certificate inspections. The Chief Inspector may extend a certificate for up to three additional months beyond such grace period subject to a satisfactory external inspection of the object and receipt of a fee of ~~twenty dollars~~ *as set under § 40.1-51.15 A* for each month of inspection beyond the grace period.

D. Inspection requirements for operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions and shall include but not be limited to the following criteria:

1. Previous experience, based on records of inspection, performance and maintenance;

2. Location, with respect to personnel hazard;

3. Qualifications and competency of inspection and operating personnel;

4. Provision for related safe operation controls; and

5. Interrelation with other operations outside of the scope of this chapter.

E. Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Board may, in its discretion, permit variations in the inspection requirements as provided in this section.

F. If, at the discretion of the Commissioner, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user of the boiler or pressure vessel.

G. All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this

Commonwealth after the six-month period from the date upon which the rules and regulations of the Board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the Board.

§ 40.1-51.10:1. Issuance of certificates; charges.

The Commissioner may designate special inspectors and contract fee inspectors to issue inspection certificates for boilers and pressure vessels they have inspected. If no defects are found or when the boiler or pressure vessel has been corrected in accordance with regulations, the designated special inspector or contract fee inspector shall issue a certificate on forms furnished by the Department. The designated special inspector or contract fee inspector shall collect the inspection certificate fee required under § 40.1-51.10 at the time of the issuance of the certificate and forward the fee and a duplicate of the certificate to the chief inspector immediately.

Each designated special inspector or contract fee inspector may charge a fee as set under § 40.1-51.15 A for each certificate issued, but the charge shall not be mandatory. No charge shall be made unless the inspector has previously contracted therefor.

§ 40.1-51.11:1. Owner-user inspection agencies.

Any person, firm, partnership or corporation operating pressure vessels in this Commonwealth may seek approval and registration as an owner-user inspection agency by filing an application with the chief inspector on forms prescribed and available from the Department, and request approval by the Board. Each application shall be accompanied by a fee of \$25 as set under § 40.1-51.15 A and a bond in the penal sum of \$5,000 which shall continue to be valid during the time the approval and registration of the company as an owner-user inspection agency is in effect. Applicants meeting the requirements of the rules and regulations for approval as owner-user inspection agencies will be approved and registered by the Board. The Board shall withdraw the approval and registration as an owner-user inspection agency of any person, firm, partnership or corporation which fails to comply with all rules and regulations applicable to owner-user inspection agencies. Each owner-user inspection agency shall file an annual statement as required by the rules and regulations, accompanied by a filing fee in accordance with the following schedule:

- (a) For statements covering not more than twenty-five vessels - seven dollars per vessel.
- (b) For statements covering more than 25, but less than 101 vessels - \$200.
- (c) For statements covering more than 100, but less than 501 vessels - \$400.
- (d) For statements covering more than 500 vessels - \$800 as set under § 40.1-51.15 A.

§ 40.1-51.15. Fees.

A. The Safety and Health Codes Board shall establish fees required under this chapter. Following the close of any biennium, when the account for the Safety and Health Codes Board shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses. Such revisions, and the underlying rationale, shall be included in the Department's Annual Report submitted pursuant to § 40.1-4.1.

~~A. B.~~ The owner or user of a boiler or pressure vessel required by this chapter to be reviewed shall pay directly to the Commissioner, upon completion of inspection, fees in accordance with the following schedule:

1. Conducting or participating in reviews and surveys of boiler or pressure vessel manufacturers or repair organizations for the purpose of national accreditation, shall be charged at a rate of \$600 a fee as set under subsection A per review or survey.

2. a. All other inspections, including variance reviews, emergency repair reviews, and reviews of secondhand or used boilers or pressure vessels made by the Commissioner or his appointed representative shall be charged for at the rate of not less than \$100 for one-half day of four hours, and \$200 for one full day of eight hours, plus all expenses, including traveling and lodging a fee as set under subsection A.

b. "Secondhand" shall mean an object which has changed ownership and location after primary use.

~~B. C.~~ The Commissioner shall transfer all fees so received to the State Treasurer for deposit into the general fund of the state treasury.

2. That the provisions of this act shall become effective on January 1, 1998.

3. That, by October 1, 1997, the Safety and Health Codes Board shall promulgate regulations to establish the fees and charges required in this act.

4. That, by October 1, 1997, the Safety and Health Codes Board shall promulgate regulations governing the use of Commonwealth inspectors to inspect uninsured boilers or pressure vessels when contract fee inspectors are unavailable and to set fees for such inspections conducted by Commonwealth inspectors.