

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 285

An Act to amend and reenact §§ 40.1-28, 40.1-113, and 40.1-114 of the Code of Virginia, relating to the enforcement of child labor laws; child labor offenses.

[S 896]

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-28, 40.1-113, and 40.1-114 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-28. Unlawful to require payment for medical examination as condition of employment.

It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any medical records required by the employer as a condition of employment.

Any employer who violates the provisions of this section shall be subject to a civil penalty not to exceed \$100 for each violation. *The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following its receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact. A penalty determination by the Commissioner shall be final, unless within fifteen days after receipt of such notice the person charged with the violation notifies the Commissioner by certified mail that he intends to contest the proposed penalty before the appropriate general district court.*

Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties which are not contested by employers.

§ 40.1-113. Child labor offenses; civil penalties.

A. Whoever employs, procures, or, having under his control, permits a child to be employed, ~~or issues an employment certificate,~~ in violation of any of the provisions of this chapter other than §§ 40.1-100.2, 40.1-103 and 40.1-112, shall be subject to a civil penalty that (i) shall not exceed \$10,000 for each violation that results in the employment of a child who is seriously injured or who dies in the course of that employment and (ii) shall not exceed \$1,000 for each other violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. ~~The determination by the Commissioner shall be final, unless within fifteen days after receipt of such notice the person charged with the violation notifies the Commissioner by certified mail that he intends to contest the proposed penalty before the appropriate general district court.~~

B. *The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to*

ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact.

C. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the treasury of the Commonwealth. The Commissioner shall prescribe procedures for the payment of proposed penalties which are not contested by employers.

§ 40.1-114. Enforcement of child labor law.

The Commissioner, with the assistance of state and local law-enforcement officers, shall enforce the provisions of this chapter and shall have authority to appoint such representatives as may be necessary to secure the enforcement of this chapter. He shall make all necessary rules and regulations for carrying out the purposes of this chapter, and shall prescribe and supply to the proper officials blanks for employment certificates and such other forms as may be required for carrying out the provisions of this chapter.