

HOUSE BILL NO. 339

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Lopez)

*A BILL to amend and reenact § 40.1-22 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-22.2 and 45.2-502.1, relating to employee protections; wage and hour, occupational health and safety, and mining safety provisions.*

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

10     1. That § 40.1-22 of the Code of Virginia is amended and reenacted and that the Code of Virginia is  
11     amended by adding sections numbered 40.1-22.2 and 45.2-502.1 as follows:

**§ 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board.**

13       (4) A. The Safety and Health Codes Commission is continued and shall hereafter be known as the Safety  
14 and Health Codes Board. The Board shall consist of fourteen members, twelve of whom shall be appointed  
15 by the Governor. One member shall, by reason of previous vocation, employment or affiliation, be chosen to  
16 represent labor in the manufacturing industry; one member shall, by reason of previous vocation,  
17 employment or affiliation, be chosen to represent labor in the construction industry; one member shall, by  
18 reason of previous vocation, employment or affiliation, be chosen to represent industrial employers; one  
19 member shall be chosen from and be a representative of the general public; one member shall be a  
20 representative of agricultural employers; one member shall, by reason of previous vocation, employment or  
21 affiliation, be chosen to represent agricultural employees; one member shall, by reason of previous vocation,  
22 employment or affiliation, be chosen to represent construction industry employers; one member shall be a  
23 representative of an insurance company; one member shall be a labor representative from the boiler pressure  
24 vessel industry; one member shall be a labor representative knowledgeable in chemicals and toxic substances;  
25 one member shall be an employer representative of the boiler pressure vessel industry; one member shall be  
26 an industrial representative knowledgeable in chemical and toxic substances, and the Director of the  
27 Department of Environmental Quality or his duly authorized representative shall be a member ex officio with  
28 full membership status. The Commissioner of Health or his duly authorized representative shall also be a  
29 member ex officio with full membership status.

30       (2) B. The first appointive members shall be appointed as follows: one for a term of four years, one for a  
31       term of three years, one for a term of two years, and one for a term of one year. Of the members appointed to  
32       represent the construction industry, one shall be appointed for the term of two years and one shall be

33 appointed for the term of four years. Succeeding appointments shall be for terms of four years each but other  
34 vacancies shall be filled by appointment for the unexpired term.

35 (3) C. The Board shall annually select a chairman from its members. The Board shall meet at least once  
36 every six months; other meetings may be held upon call of the chairman or any three members of the Board.  
37 Five members of the Board shall constitute a quorum.

38 (4) D. The Board shall study and investigate all phases of safety in business establishments, the  
39 application of this title thereto, and shall serve as advisor to the Commissioner.

40 (5) E. The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or  
41 repeal rules and regulations to further, protect and promote the safety and health of employees in places of  
42 employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and  
43 Health Act of 1970 (P.L. 91-596) (*the Federal Act*), and as may be necessary to carry out its functions  
44 established under this title. The Commissioner shall enforce such rules and regulations. All such rules and  
45 regulations shall be designed to protect and promote the safety and health of such employees. In making such  
46 rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the  
47 standard which most adequately assures, to the extent feasible, on the basis of the best available evidence,  
48 that no employee will suffer material impairment of health or functional capacity. However, such standards  
49 shall be at least as stringent as the standards promulgated by the Federal ~~Occupational Safety and Health~~ Act  
50 of 1970 (P.L. 91-596). *If the U.S. Secretary of Labor (i) revokes or repeals a previously promulgated*  
51 *standard under the Federal Act or (ii) amends a previously promulgated standard under the Federal Act or*  
52 *issues a standard interpretation for a previously promulgated standard under the Federal Act that results in*  
53 *the federal standard becoming less effective in protecting and promoting the safety and health of employees*  
54 *in the Commonwealth, the Board shall, as soon as practical, adopt a standard that incorporates the standard*  
55 *under the Federal Act as it existed prior to being repealed, revoked, amended, or newly interpreted.*

56 In addition to the attainment of the highest degree of health and safety protection for the employee, other  
57 considerations shall be the latest available scientific data in the field, the feasibility of the standards, and  
58 experience gained under this and other health and safety laws. Whenever practicable, the standard  
59 promulgated shall be expressed in terms of objective criteria and of the performance desired. Such standards  
60 when applicable to products which are distributed in interstate commerce shall be the same as federal  
61 standards unless deviations are required by compelling local conditions and do not unduly burden interstate  
62 commerce.

63 (6) F. Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 shall apply to the adoption of rules and regulations

64 under this section and to proceedings before the Board.

65 (6a) G. The Board shall provide, without regard to the requirements of Chapter 40 (§ 2.2-4000 et seq.) of  
66 Title 2.2, for an emergency temporary standard to take immediate effect upon publication in a newspaper of  
67 general circulation, published in the City of Richmond, Virginia, if it determines that employees are exposed  
68 to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from  
69 new hazards, and that such emergency standard is necessary to protect employees from such danger. The  
70 publication mentioned herein shall constitute notice that the Board intends to adopt such standard within a  
71 period of six months. The Board by similar publication shall prior to the expiration of six months give notice  
72 of the time and date of, and conduct a hearing on, the adoption of a permanent standard. The emergency  
73 temporary standard shall expire within six months or when superseded by a permanent standard, whichever  
74 occurs first, or when repealed by the Board.

75 (7) H. Any person who may be adversely affected by a standard issued under this title may challenge the  
76 validity of such standard in the Circuit Court of the City of Richmond by declaratory judgment. The  
77 determination of the Safety and Health Codes Board shall be conclusive if supported by substantial evidence  
78 in the record considered as a whole. Adoption of a federal occupational safety and health standard shall be  
79 deemed to be sufficient evidence to support promulgation of such standard. The filing of a petition for  
80 declaratory judgment shall not operate as a stay of the standard unless the court issues a preliminary  
81 injunction.

82 **§ 40.1-22.2. Wage and hour protections; federal rules.**

83 A. *As used in this section:*

84 "Federal wage and hour law" means the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.) and  
85 federal regulations adopted under that statute.

86 "Stringent" means a law, rule, or standard's overall effectiveness in protecting the rights of workers. A  
87 law, rule, or standard is considered to be more stringent if it imposes an obligation on employers that is  
88 stricter or more demanding than what is otherwise imposed by law or if it provides for greater rights,  
89 benefits, remedies, or procedures for employees than what is otherwise provided by law.

90 B. *If a federal wage and hour law is repealed, revoked, or amended in any manner that results in the  
91 federal protections of employees becoming less stringent, or if the applicable federal agency issues a new  
92 interpretation of the federal wage and hour law through an opinion letter, ruling letter, administrative  
93 interpretation, program policy manual, or program policy letter that results in the federal protections of  
94 employees becoming less stringent, and the provisions of this title or other state law do not have*

95     *corresponding rules in place that are at least as stringent as the federal wage and hour law being repealed,*  
96     *revoked, amended, or newly interpreted, the Commissioner shall, as soon as practical, promulgate*  
97     *regulations that incorporate the federal wage and hour law being repealed, revoked, amended, or newly*  
98     *interpreted as a minimum requirement. Any such regulation promulgated pursuant to this section may be*  
99     *enforced through the existing enforcement procedures established under this chapter for violations of Article*  
100    *1.1 (§ 40.1-28.8 et seq.) or Article 2 (§ 40.1-29 et seq.), as applicable, including applicable penalties and*  
101    *remedies.*

102    **§ 45.2-502.1. Safety and health; federal rules.**

103    A. *As used in this section, "stringent" means a law, rule, or standard's overall effectiveness in protecting*  
104    *the rights of workers. A law, rule, or standard is considered to be more stringent if it imposes an obligation*  
105    *on employers that is stricter or more demanding than what is otherwise imposed by law or if it provides for*  
106    *greater rights, benefits, remedies, or procedures for employees than what is otherwise provided by law.*

107    B. *If a federal mine safety law is repealed, revoked, or amended in any manner that results in the federal*  
108    *protections for the safety and health of miners becoming less stringent, or if the applicable federal agency*  
109    *issues a new interpretation of a federal mine safety law through an opinion letter, ruling letter,*  
110    *administrative interpretation, program policy manual, or program policy letter that results in the federal*  
111    *protections for the safety and health of miners becoming less stringent, and the provisions of this chapter or*  
112    *other state law do not have corresponding rules in place that are at least as stringent as the federal mine*  
113    *safety law being repealed, revoked, amended, or newly interpreted, the Department shall, as soon as*  
114    *practical, promulgate regulations that incorporate the federal mine safety law being repealed, revoked,*  
115    *amended, or newly interpreted as a minimum requirement. Any such regulation promulgated pursuant to this*  
116    *section may be enforced through the existing enforcement procedures established under the Act, including*  
117    *applicable penalties and remedies.*