CHAPTER 3

Department and Director of Labor, Licensing, and Regulation

ARTICLE 1

General Provisions

**SECTION 41‑3‑10.** Director of department appointed by Governor; department to promulgate and enforce regulations.

 A Director of the Department of Labor, Licensing and Regulation must be appointed by the Governor pursuant to the provisions of Section 40‑1‑40. The director means the chief administrative officer of the Department of Labor, Licensing and Regulation. The department is authorized to promulgate regulations for the department, and it is the duty of the department to administer and enforce the regulations and direct all inspections and investigations except as otherwise provided.

HISTORY: 1962 Code Section 40‑1; 1952 Code Section 40‑1; 1942 Code Section 3253‑11; 1936 (39) 1615; 1941 (42) 119; 1993 Act No. 181, Section 960, eff February 1, 1994; 2010 Act No. 137, Section 2, eff March 31, 2010.

Code Commissioner's Note

At the direction of the Code Commissioner, the reference in the first sentence to 40‑73‑15 was corrected to 40‑1‑40.

Effect of Amendment

The 1993 amendment substituted this section for one which read: "A Department of Labor is hereby created and established under the supervision and direction of a commissioner to be known as the Commissioner of Labor. The Commissioner shall have charge of the administration of the Department of Labor and the enforcement of all rules and regulations which it is the duty of the Department to administer and enforce and shall direct all inspections and investigations except as otherwise provided".

The 2010 amendment deleted the first sentence, relating to the creation of the Division of Labor.

**SECTION 41‑3‑20.** Repealed by 1993 Act No. 181, Section 1617(B), eff February 1, 1994.

Editor's Note

Former Section 41‑3‑20 was entitled "Appointment, term and vacancy in office of Commissioner" and was derived from 1962 Code Section 40‑2; 1952 Code Section 40‑2; 1942 Code Section 3253‑12; 1936 (39) 1615; 1939 (41) 297; 1956 (49) 1736.

**SECTION 41‑3‑30.** Employees.

 The Director of Labor, Licensing, and Regulation, or his designee, pursuant to Section 40‑73‑15, may employ such personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized by the statute and for which funds have been authorized in the annual general appropriations act. The director or his designee may assign or transfer employees from one subdivision to another or may combine the clerical and inspection forces of two or more subdivisions, as he may consider necessary and advisable.

HISTORY: 1962 Code Section 40‑3; 1952 Code Section 40‑3; 1942 Code Section 3253‑13; 1936 (39) 1615; 1993 Act No. 181, Section 961, eff February 1, 1994.

Effect of Amendment

The 1993 amendment substituted the first sentence for one allowing the commissioner to appoint and assign clerks, stenographers and other employees, with approval of the division directors, to perform the work of the Department, and fix their pay, subject to the approval of the General Assembly or such agency as it may designate; and in the second sentence substituted "director or his designee" for "Commissioner" and "subdivision" for "division".

**SECTION 41‑3‑40.** Promulgation of regulations by director.

 The Director of the Department of Labor, Licensing and Regulation, or his designee, shall promulgate regulations with reference to this title as shall be necessary properly to carry out the duties imposed upon the department.

HISTORY: 1962 Code Section 40‑4; 1952 Code Section 40‑4; 1942 Code Section 3253‑13; 1936 (39) 1615; 1993 Act No. 181, Section 962, eff February 1, 1994; 1993 Act No. 181, Section 977, eff February 1, 1994; 2010 Act No. 137, Section 3, eff March 31, 2010.

Effect of Amendment

The first 1993 amendment rewrote this section which formerly provided "The Commissioner shall make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary properly to carry out the duties imposed upon the Commissioner and the work of the Department."

The second 1993 amendment substituted "Subdivision of the Division of Labor" for "Division of Labor.

The 2010 amendment rewrote this section.

**SECTION 41‑3‑50.** Inspections of work places, sites or areas.

 The director of the department or his designee shall visit and inspect at reasonable hours, as often as practicable, all places, sites, or areas where employment comes under the jurisdiction of the department to enforce the provisions of Chapters 1 through 24.

HISTORY: 1962 Code Section 40‑5; 1952 Code Section 40‑5; 1942 Code Sections 3240, 3253‑13; 1932 Code Section 3240; Civ. C. '22 Section 946; Civ. C. '12 Section 868; 1909 (26) 14; 1936 (39) 1615; 1972 (57) 2399; 1993 Act No. 181, Section 963, eff February 1, 1994; 2010 Act No. 137, Section 4, eff March 31, 2010.

Effect of Amendment

The 1993 amendment substituted "The director of the department or his designee" for "The Commissioner, his assistants and inspectors" and "division" for "Commissioner".

The 2010 amendment substituted "24" for "25 of this Title" at the end of this section.

**SECTION 41‑3‑55.** Determination of liability for violations at sites involving multiple employers or contractors.

 At any construction site involving multiple employers or contractors, the department inspector when citing any such employer or contractor for a violation of any regulation or standard provided by law shall first determine which employer or contractor is in violation and such employer or contractor only shall be cited and held responsible for such violation.

HISTORY: 1979 Act No. 175 Section 2; 1993 Act No. 181, Section 964, eff February 1, 1994.

Effect of Amendment

The 1993 amendment substituted "department" for "Department of Labor".

**SECTION 41‑3‑60.** Enforcement of labor and employment laws; appointment and duties of inspectors and assistants.

 The Director of the Department of Labor, Licensing and Regulation or his designee shall enforce all laws of Chapters 1 through 24 in places, sites, or areas, which come under his jurisdiction, and appoint such assistants and inspectors as necessary to carry out his duties. The duties of such assistants and inspectors shall be prescribed by the director which come under his jurisdiction.

HISTORY: 1962 Code Section 40‑6; 1952 Code Section 40‑6; 1942 Code Section 3253‑13; 1936 (39) 1615; 1972 (57) 2400; 1993 Act No. 181, Section 965, eff February 1, 1994; 2010 Act No. 137, Section 5, eff March 31, 2010.

Effect of Amendment

The 1993 amendment in the first sentence substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner" and in the last sentence substituted "director" for "Commissioner".

The 2010 amendment substituted "24" for "25 of this Title" following "Chapters 1 through" in the first sentence.

**SECTION 41‑3‑70.** Representatives of employer and employees may accompany inspectors.

 A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Director of the Department of Labor, Licensing, and Regulation or his designee, his assistant or inspector during the physical inspection of any workplace for the purpose of aiding such inspection. No employee shall suffer any loss of wages or other benefits which would normally accrue to him because of his participation in the walk‑around inspection under this section. Where there is no authorized representative, the director or his designee, his assistant or inspector shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

HISTORY: 1962 Code Section 40‑6.1; 1973 (58) 378; 1993 Act No. 181, Section 966, eff February 1, 1994.

Effect of Amendment

The 1993 amendment substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner" in the first sentence and in the last sentence substituted "director or his designee" for "Commissioner".

**SECTION 41‑3‑80.** Repealed by 2010 Act No. 137, Section 8, eff March 31, 2010.

Editor's Note

Former Section 41‑3‑80 was entitled "Enforcement of Fair Labor Standards Act of 1938" and was derived from 1962 Code Section 40‑7; 1952 Code Section 40‑7; 1942 Code Section 3253‑17; 1939 (41) 114; 1993 Act No. 181, Section 967.

**SECTION 41‑3‑100.** Furnishing of blanks and forms.

 All blanks and forms required by the Director of the Department of Labor, Licensing and Regulation or his designee under provisions of Chapters 1 through 24 must be furnished by the director or his designee.

HISTORY: 1962 Code Section 40‑10; 1952 Code Section 40‑10; 1942 Code Section 3245; 1932 Code Section 3245; Civ. C. '22 Section 951; Civ. C. '12 Section 873; 1909 (26) 14; 1972 (57) 2400; 1993 Act No. 181, Section 968, eff February 1, 1994; 2010 Act No. 137, Section 6, eff March 31, 2010.

Effect of Amendment

The 1993 amendment substituted "Director of the Department of Labor, Licensing, and Regulation or his designee" for "Commissioner of Labor" and "director or his designee" for "Commissioner".

The 2010 amendment substituted "24 must" for "25 of this Title shall" following "Chapters 1 through"; and made other nonsubstantive changes.

**SECTION 41‑3‑110.** Powers of Director generally.

 The Director of the Department of Labor, Licensing, and Regulation or his designee may subpoena witnesses, documents, take and preserve testimony, examine witnesses, administer oaths and, under proper restrictions, enter any public institution of the State or any factory, store, workshop, laundry, public eating house or mine and interrogate any person employed therein or connected therewith or the proper officers of a corporation or he may file a written or printed list of interrogatories and require full and complete answers to them to be returned, under oath, within fifteen days of the receipt of such list.

HISTORY: 1962 Code Section 40‑11; 1952 Code Section 40‑11; 1942 Code Section 3253‑13; 1936 (39) 1615; 1974 (58) 2328; 1993 Act No. 181, Section 969, eff February 1, 1994.

Effect of Amendment

The 1993 amendment substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner of Labor".

**SECTION 41‑3‑120.** Enforcement.

 The Director of the Department of Labor, Licensing and Regulation or his designee shall enforce the provisions of Chapters 1 through 24 and prosecute all violations of law relating to those chapters before any court of competent jurisdiction.

HISTORY: 1962 Code Section 40‑12; 1952 Code Section 40‑12; 1942 Code Section 3253‑13; 1936 (39) 1615; 1972 (57) 2517; 1981 Act No. 180 Section 2; 1993 Act No. 181, Section 970, eff February 1, 1994; 2010 Act No. 137, Section 7, eff March 31, 2010.

Effect of Amendment

The 1993 amendment substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner of Labor".

The 2010 amendment substituted "24" for "25 of this Title" following "Chapters 1 through".

**SECTION 41‑3‑130.** Solicitors and prosecuting attorneys shall prosecute violations.

 The solicitor of the circuit or the prosecuting attorney of the city court, upon the request of the Director of the Department of Labor Licensing, and Regulation or his designee, or any of his assistants or deputies, shall prosecute any violation of law which it is the duty of the director or his designee to enforce.

HISTORY: 1962 Code Section 40‑13; 1952 Code Section 40‑13; 1942 Code Section 3253‑13; 1936 (39) 1615; 1993 Act No. 181, Section 971, eff February 1, 1994.

Effect of Amendment

The 1993 amendment and substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner of Labor" and "director or his designee" for "Commissioner".

**SECTION 41‑3‑140.** Penalties for impeding Director in performance of his duties.

 Any person who shall willfully impede or prevent the Director of the Department of Labor, Licensing, and Regulation or his designee, his agents or assistants, in the free and full performance of his duties shall, upon conviction, be fined not less than one hundred dollars or more than one thousand dollars or be imprisoned for not less than thirty days or more than six months, or both.

HISTORY: 1962 Code Section 40‑14; 1952 Code Section 40‑14; 1942 Code Section 3237; 1932 Code Section 1299; Cr. C. '22 Section 194; Cr. C. '12 Section 487; 1909 (26) 15; 1924 (33) 1096; 1934 (38) 1364; 1936 (39) 1615; 1941 (42) 119; 1972 (57) 2769; 1993 Act No. 181, Section 972, eff February 1, 1994.

Effect of Amendment

The 1993 amendment substituted "Director of the Department of Labor, Licensing and Regulation or his designee" for "Commissioner of Labor".

ARTICLE 5

Migrant Labor Subdivision [Repealed]

**SECTIONS 41‑3‑510 to 41‑3‑540.** Repealed by 2010 Act No. 137, Section 8, eff March 31, 2010.

Editor's Note

Former Section 41‑3‑510 was entitled "Migrant Labor subdivision established" and was derived from 1962 Code Section 40‑415; 1976 Act No. 593, Section 1; 1993 Act No. 181, Sections 973, 977.

Former Section 41‑3‑520 was entitled "Promulgation of rules and regulations" and was derived from 1962 Code Section 40‑416; 1976 Act No. 593, Section 1; 1993 Act No. 181, Section 974.

Former Section 41‑3‑530 was entitled "Public hearing concerning rules and regulations; notice" and was derived from 1962 Code Section 40‑417; 1976 Act No. 593, Section 1; 1993 Act No. 181, Sections 976, 977.

Former Section 41‑3‑540 was entitled "Contracts to provide migrant labor services; annual report of Director of Labor, Licensing, and Regulation to General Assembly" and was derived from 1962 Code Section 40‑418; 1976 Act No. 593, Section 1; 1993 Act No. 181, Section 975.

ARTICLE 6

Certain Terms Deemed to Have Certain Meanings

**SECTION 41‑3‑610.** Commissioner of Labor to mean Director of Department of Labor, Licensing, and Regulation; Department of Labor to mean Division of Labor; division to mean subdivision; contested matters appealable to administrative law judge.

 Wherever in any other chapter of Title 41 the term Commissioner of Labor appears or is used, it is considered to mean the Director of the Department of Labor, Licensing, and Regulation or his designee. Wherever in any other chapter of Title 41 the term Department of Labor appears or is used, it is considered to mean the Division of Labor, that is, a division of the Department of Labor, Licensing, and Regulation. Wherever in any other chapter of Title 41 the term division appears or is used with reference to a division of the former Department of Labor, it is considered to mean a subdivision of the Division of Labor. Any contested case or matter heard or decided by the former Commissioner of Labor, his designee, or any other employee of the former Department of Labor may be appealed to an administrative law judge as provided under Article 5 of Chapter 23 of Title 1.

HISTORY: 1993 Act No. 181, Section 977, eff February 1, 1994; 1994 Act No. 358, Section 1, eff May 3, 1994.

Effect of Amendment

The 1994 amendment provided that any contested matter heard by the former commissioner of labor may be appealed to an administrative law judge rather than the OSHA Review Board.