

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 734

An Act to amend and reenact §§ 40.1-28.9, 40.1-118 through 40.1-122, 40.1-124, 40.1-125, 54.1-1131, and 58.1-439.6 of the Code of Virginia, relating to voluntary apprenticeships.

[H 1008]

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-28.9, 40.1-118 through 40.1-122, 40.1-124, 40.1-125, 54.1-1131, and 58.1-439.6 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-28.9. Definition of terms.

As used in this article:

A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

B. "Employee" includes any individual employed by an employer, except the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;

3. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact, exist, or where the services rendered to such organizations are on a voluntary basis;

4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants and cashiers in theaters;

5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

6. Any person under the age of 18 in the employ of his father, mother or legal guardian;

7. Any person confined in any penal or corrective institution of the State or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

8. Any person employed by a boys' and/or girls' summer camp;

9. Any person under the age of 16, regardless of by whom employed;

10. Any person who normally works and is paid based on the amount of work done;

11. (Reserved);

12. Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;

13. Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;

14. Students ~~and apprentices~~ participating in a bona fide educational ~~or apprenticeship~~ program;

15. Any person employed by an employer who does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters and parents of the employer shall not be counted in determining the number of persons employed;

16. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school, provided the person is not employed more than 20 hours per week;

16A. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school and is in a work-study program or its equivalent at the institution at which he or she is enrolled as a student;

17. Any person who is less than 18 years of age and who is under the jurisdiction and direction of a juvenile and domestic relations district court.

C. "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to the employer of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

D. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

§ 40.1-118. Authority of Council.

The Council may:

1. Determine standards for apprentice agreements, which standards shall not be lower than those prescribed by this chapter;
2. Appoint the secretary of the Apprenticeship Council to act as secretary of each state joint apprenticeship committee;
3. Approve, if in their opinion approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established under this chapter;
4. Terminate or cancel any apprentice agreement in accordance with the provisions of such agreement;
5. Keep a record of apprentice agreements and their disposition;
6. Issue certificates of journeymanship upon the completion of the apprenticeship;
7. Perform such other duties as are necessary to carry out the intent of this chapter;
8. Review decisions of local and state joint apprenticeship committees *adjusting relating to* apprenticeship disputes pursuant to *subdivision C 3 of § 40.1-119 C 3*;
9. Initiate deregistration proceedings when the apprenticeship program is not conducted, operated and administered in accordance with the registered provisions except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship;
4. Perform such other duties as are necessary to carry out the intent of this chapter; and
10. 5. Advise the State Board for Community Colleges on policies to coordinate apprenticeship-related instruction delivered by state and local public education agencies.

§ 40.1-119. Local and state joint apprenticeship committees.

A. A local joint apprenticeship committee may be *appointed established* in any trade or group of trades in a city or trade area, ~~by the Apprenticeship Council~~, whenever the apprentice training needs of such trade or group of trades justify such establishment. Sponsors ~~not signatory to a bargaining agreement may operate an individual apprenticeship program or, at the option and under guidelines prescribed by a joint committee, participate in an apprenticeship program operated by a joint apprenticeship committee.~~

B. When two or more local joint apprenticeship committees have been established in the state for a trade or group of trades or at the request of any trade or group of trades, ~~the Apprenticeship Council may appoint~~ a state apprenticeship committee *may be established* for such trade or group of trades. Such local and state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the committee shall be appointed from persons known to represent the interests of employers and of employees respectively.

C. The functions of a local joint apprenticeship committee shall be:

1. To cooperate with school authorities in regard to the education of apprentices;
2. In accordance with standards established by the Apprenticeship Council, to establish local standards of apprenticeship regarding schedule of operations, application of wage rates, working conditions for apprentices, and the number of apprentices which shall be employed locally in the trade; and
3. To adjust apprenticeship disputes.

D. The functions of a state trade apprenticeship committee shall be to assist in an advisory capacity in the development of statewide standards of apprenticeship and in the development of local standards and local committees.

§ 40.1-120. Definitions.

As used in this chapter, the following terms shall have the following meanings unless the context indicates otherwise:

"Apprenticeable occupation" means a skilled ~~trade~~ *occupation* having the following characteristics:

1. It is customarily learned in a practical way through a structured systematic program of on-the-job supervised work experience;
2. It is clearly identifiable and recognized throughout an industry;
3. It involves manual, mechanical or technical skills which require a minimum of 2,000 hours of on-the-job work experience of new apprenticeable trades not otherwise established; and
4. It requires related instruction to supplement the on-the-job work experience.

"Apprentice" means a person at least ~~sixteen~~ 16 years of age who is covered by a written agreement with an employer and approved by the ~~Apprenticeship Council~~ *Commissioner*. The agreement shall provide for not less than 2,000 hours of reasonably continuous employment ~~in new apprenticeable trades not otherwise established~~ for such person, for his participation in an approved schedule of work experience through employment, and for the amount of related instruction required in the ~~craft or trade~~ *occupation*.

"Employer" means any person or organization employing a registered apprentice ~~who is, whether or not such person or organization is a party to an apprenticeship agreement with a sponsor.~~

"Joint apprenticeship committee" means a group equally representative of management and labor

representatives which works under a bargaining agreement and is established to carry out the administration of an apprenticeship training program.

"Sponsor" means either an individual employer, a group of employers, or an association or organization operating an apprenticeship program, and in whose name the program is registered.

§ 40.1-121. Requisites of apprentice agreement.

Every apprentice agreement entered into under this chapter shall contain:

1. The names, signatures, and addresses of the contracting parties;
2. The date of birth of the apprentice;
3. *The contact information of the Program Sponsor and the Division of Registered Apprenticeship;*
4. A statement of the ~~trade, craft, occupation~~ or business ~~which that~~ the apprentice is to be taught, and the time at which the apprenticeship will begin and end;
4. 5. A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related or supplemental instruction;
5. 6. A statement setting forth a schedule of the processes in the ~~trade~~ *occupation* or industry division in which the apprentice is to be taught and the approximate time to be spent at each process;
6. 7. A statement of the graduated scale of wages to be paid the apprentice and whether the required ~~schooltime~~ *related instruction* shall be compensated;
7. 8. A statement providing for a period of probation of not less than 500 hours of employment and instruction extending over not less than four months, during which time the apprentice agreement shall be terminated by the ~~Council~~ *Commissioner* at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the ~~Council~~ *Commissioner* by mutual agreement of all parties thereto, or cancelled by the ~~Council~~ *Commissioner* for good and sufficient reason;
9. *A reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement;*
10. *A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination on the basis of race, color, religion, national origin, or sex;*
11. *Contact information, including name, address, phone number, and email if appropriate, of the appropriate authority designated under the program to receive, process, and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions;*
8. 12. A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the ~~Council~~ *Commissioner*, transfer such contract to any other employer if (i) the apprentice consents, (ii) such other employer agrees to assume the obligations of the apprentice agreement, and (iii) the transfer is reported to the registration agency within ~~thirty~~ 30 days of the transfer; and
9. 13. Such additional terms and conditions as may be prescribed or approved by the ~~Council~~ *Commissioner* not inconsistent with the provisions of this chapter.

§ 40.1-122. Approval of agreement by Commissioner; signing.

No apprentice agreement under this chapter shall be effective until approved by the ~~Council~~ *Commissioner*. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 40.1-124, and by the apprentice, and, if the apprentice is a minor, by the minor's father or mother, provided, that if both father and mother be dead or legally incapable of giving consent or have abandoned their children, then by the guardian of the minor.

§ 40.1-124. Agreement signed by organization of employers or of employees.

For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the ~~Council~~ *Commissioner* be signed by an association of employers or an organization of employees instead of by an individual employer. In such a case the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for such apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of each such employment. The apprentice agreement in such a case shall also expressly provide for the transfer of the apprentice, subject to the approval of the ~~Council~~ *Commissioner*, to such employer or employers as shall sign a written agreement with the apprentice, and if the apprentice is a minor with his parent or guardian, as specified in § 40.1-122, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the agreement entered into between the apprentice and the employer association or employee organization.

§ 40.1-125. Commissioner to administer chapter.

A. The Commissioner, with the advice and guidance of the Council, shall be responsible for administering the provisions of this chapter.

B. The Commissioner shall:

1. Approve, if approval is in the best interests of the apprentice, any apprenticeship agreement that meets the standards established under this chapter;

2. Terminate or cancel any apprenticeship agreement in accordance with the provisions of such agreement;

3. Keep a record of apprenticeship agreements and their disposition;

4. Issue certificates of completion upon the completion of the apprenticeship;

5. Initiate deregistration proceedings when an apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions of the Virginia State Plan for Equal Employment Opportunity in Apprenticeship; and

6. Perform such other duties as are necessary to carry out the intent of this chapter.

§ 54.1-1131. Exemptions.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement specified in § 54.1-1130 for a tradesman license:

1. The Board of Housing and Community Development prior to July 1, 1995.

2. Any local governing body prior to July 1, 1978.

3. An apprenticeship program which is approved by the ~~Virginia Apprenticeship Council~~ Commissioner of Labor and Industry.

Individuals applying for a tradesman license between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have the required number of years of discipline-free experience set forth in Board regulations.

B. Upon satisfactory evidence to the Board, the following individuals shall not be required to fulfill the examination requirement specified in § 54.1-1130 to be certified as a backflow prevention device worker or licensed as a liquefied petroleum gas fitter:

1. Individuals approved, or recognized as having expertise, by a local governing body prior to July 1, 1998, to perform backflow prevention device work;

2. Individuals applying for certification as a backflow prevention device worker between July 1, 1998 and July 1, 1999, who are able to demonstrate that they have the required number of years of discipline-free experience and education or training set forth in Board regulations; or

3. Individuals applying for licensure as a liquefied petroleum gas fitter within one year of the effective date of the Board's final regulations, who are able to demonstrate that they have at least five years' experience as a liquefied petroleum gas fitter.

C. The provisions of this article shall not apply to any individual who is performing work on (i) any ship, boat, barge or other floating vessel or (ii) a single-family residence where the value of the work performed is less than \$250 and such individual does not hold himself out to the general public as a tradesman.

D. Individuals applying for a natural gas fitter provider license within one year of the effective date of the Board's final regulations, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have five years' prior experience as a natural gas fitter provider.

E. Individuals applying for a natural gas fitter provider license between July 1, 1999 and July 1, 2004, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.

F. Individuals applying for licensure as a liquefied petroleum gas fitter between July 1, 2000 and July 1, 2005, shall be deemed to have fulfilled the examination requirements if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.

§ 58.1-439.6. Worker retraining tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the ~~Virginia Apprenticeship Council~~ Commissioner of Labor and Industry.

"Qualified employee" means an employee of an employer eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's operations if the standard fringe benefits are paid by the employer for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer,

and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as determined by the Department of Small Business and Supplier Diversity in consultation with the Superintendent of Public Instruction. The term shall include a health care-related discipline.

B. For taxable years beginning on and after January 1, 1999, but prior to January 1, 2018, an employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for eligible worker retraining. However, for taxable years beginning prior to January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed \$100 per qualified employee annually. For taxable years beginning on or after January 1, 2013, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed \$200 per qualified employee annually, or \$300 per qualified employee annually if the eligible worker retraining includes retraining in a STEM or STEAM discipline including but not limited to industry-recognized credentials, certificates, and certifications. The total amount of tax credits granted to employers under this section for each fiscal year shall not exceed \$2,500,000.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. An employer shall be entitled to the credit granted under this section only for those courses at a community college or a private school which courses have been certified as eligible worker retraining to the Department of Taxation by the Department of Small Business and Supplier Diversity. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), (i) establishing procedures for claiming the credit provided by this section, (ii) defining eligible worker retraining, which shall include only those courses and programs that are substantially related to the duties of a qualified employee or that enhance the qualified employee's job-related skills, and that promote economic development, and (iii) providing for the allocation of credits among employers requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. The Department of Small Business and Supplier Diversity shall review requests for certification submitted by employers and shall advise the Tax Commissioner whether a course or program qualifies as eligible worker retraining and, if it qualifies, whether the course or program is in a STEM or STEAM discipline.

E. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

F. No employer shall be eligible to claim a credit under this section for worker retraining undertaken by any program operated, administered, or paid for by the Commonwealth.

G. The Director of the Department of Small Business and Supplier Diversity shall report annually to the chairmen of the House Finance and Senate Finance Committees on the status and implementation of the credit established by this section, including certifications for eligible worker retraining.