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**HOUSE BILL NO. 1008**

Offered January 8, 2014

Prefiled January 8, 2014

*A BILL to amend and reenact §§ 40.1-28.9, 40.1-118 through 40.1-122, 40.1-124, and 40.1-125 of the Code of Virginia, relating to voluntary apprenticeships.*

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 Referred to Committee on Commerce and Labor
 

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**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, and 40.1-125 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

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59 received by him was less than the amount determined by the employer. In such case, the amount paid  
60 such employee by his employer shall be deemed to have been increased by such lesser amount.

61 **§ 40.1-118. Authority of Council.**

62 The Council may:

63 1. Determine standards for apprentice agreements, which standards shall not be lower than those  
64 prescribed by this chapter;

65 2. Appoint the secretary of the Apprenticeship Council to act as secretary of each state joint  
66 apprenticeship committee;

67 3. Approve, if in their opinion approval is for the best interest of the apprentice, any apprentice  
68 agreement which meets the standards established under this chapter;

69 4. Terminate or cancel any apprentice agreement in accordance with the provisions of such  
70 agreement;

71 5. Keep a record of apprentice agreements and their disposition;

72 6. Issue certificates of journeymanship upon the completion of the apprenticeship;

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

74 8. Review decisions of local and state joint apprenticeship committees adjusting *relating to*  
75 apprenticeship disputes pursuant to *subdivision C 3 of § 40.1-119 e 3*;

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

80 4. Perform such other duties as are necessary to carry out the intent of this chapter; and

81 10- 5. Advise the State Board for Community Colleges on policies to coordinate  
82 apprenticeship-related instruction delivered by state and local public education agencies.

83 **§ 40.1-119. Local and state joint apprenticeship committees.**

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

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

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

99 1. To cooperate with school authorities in regard to the education of apprentices;

100 2. In accordance with standards established by the Apprenticeship Council, to establish local  
101 standards of apprenticeship regarding schedule of operations, application of wage rates, working  
102 conditions for apprentices, and the number of apprentices which shall be employed locally in the trade;  
103 and

104 3. To adjust apprenticeship disputes.

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

108 **§ 40.1-120. Definitions.**

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

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

112 1. It is customarily learned in a practical way through a structured systematic program of on-the-job  
113 supervised work experience;

114 2. It is clearly identifiable and recognized throughout an industry;

115 3. It involves manual, mechanical or technical skills which require a minimum of 2,000 hours of  
116 on-the-job work experience of new apprenticeable trades not otherwise established; and

117 4. It requires related instruction to supplement the on-the-job work experience.

118 "Apprentice" means a person at least ~~sixteen~~ *16* years of age who is covered by a written agreement  
119 with an employer and approved by the ~~Apprenticeship Council~~ *Commissioner*. The agreement shall  
120 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 Council; 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

182 employers who will accept full responsibility, as herein provided, for all the terms and conditions of  
183 employment and training set forth in the agreement between the apprentice and employer association or  
184 employee organization during the period of each such employment. The apprentice agreement in such a  
185 case shall also expressly provide for the transfer of the apprentice, subject to the approval of the Council  
186 Commissioner, to such employer or employers as shall sign a written agreement with the apprentice, and  
187 if the apprentice is a minor with his parent or guardian, as specified in § 40.1-122, contracting to  
188 employ the apprentice for the whole or a definite part of the total period of apprenticeship under the  
189 terms and conditions of employment and training set forth in the agreement entered into between the  
190 apprentice and the employer association or employee organization.

191 **§ 40.1-125. Commissioner to administer chapter.**

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

194 B. The Commissioner shall:

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

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

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

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

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

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