

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Department of Labor, Licensing, and Regulation
(DLS Control No. 15-363)**

Overview and Legal and Fiscal Impact

The regulations implement Chapter 140 of the Acts of 2015 by establishing Apprenticeship Maryland, a two-year pilot program to provide employment training and related classroom instruction to prepare students to obtain licenses and credentials for skilled occupations.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Labor, Licensing, and Regulation:

Office of the Secretary: Apprenticeship Maryland: COMAR 09.01.12.01-.08

Legal Analysis

Background

Apprenticeships are available to individuals age 16 and older; an employer, however, may set a higher entry age. A national apprenticeship and training program was established in federal law in 1937 with the passage of the National Apprenticeship Act, also known as the Fitzgerald Act. The purpose of the Act was to promote national standards of apprenticeship and to safeguard the welfare of apprentice workers. Along with 24 other states, Maryland has chosen to operate its own apprenticeship programs. In 1962, Maryland created the 12-member Maryland Apprenticeship and Training Council (council). Within the framework established in federal law, the State's apprenticeship and training law also established the guidelines, responsibilities, and obligations for training providers and created certain guarantees for workers who become apprenticed. The council, along with the Division of Labor and Industry within the Department of Labor, Licensing, and Regulation), serves in a regulatory and advisory capacity by providing guidance and oversight to the Maryland Apprenticeship and Training Program, which is responsible for the daily oversight of State apprenticeship programs. The council does not, however, focus on the administration of youth apprenticeship programs.

Legislation enacted in 2009, 2014, and 2015 focus more specifically on the State's efforts to foster youth apprenticeship programs. Chapter 687 of the Acts of 2009 created the State Apprenticeship Training Fund to promote pre-apprenticeship programs and other workforce

development programs in the State's public secondary schools and community colleges, to help prepare students to enter apprenticeship training programs.

Chapter 646 of the Acts of 2014 established a Youth Apprenticeship Advisory Committee in the division to evaluate the effectiveness of existing high school youth apprenticeship programs in the State, other states, and other countries based on a systematic review of data. The committee must review and identify ways to implement high school youth apprenticeship programs in the State and means through which employers and organizations can obtain grants, tax credits, and other subsidies to support establishment and operation of high school youth apprenticeship programs. The committee must also (1) set targets for the number of apprenticeship opportunities for youth that the State should reach over the next three years and (2) report by December 1 of each year to the General Assembly regarding any recommended legislation to promote high school youth apprenticeship programs in the State.

Chapter 140 of the Acts of 2015 established Apprenticeship Maryland, a pilot program that will begin in the summer of 2016 and continue until the summer of 2018. The Maryland State Department of Education, in consultation with the department and the Public School Superintendents Association of Maryland, must develop criteria for selecting two local school systems to participate in the program. Additionally, the Maryland State Department of Education must (1) select two local school systems to participate, based on the criteria; (2) consider, to the extent practicable, providing for the selection of one urban school system and one rural school system to participate in the program; and (3) collaborate with the department, the Department of Business and Economic Development, and representatives of the business community to develop criteria for and then identify eligible employers. The eligible employers must pay an eligible student at least the applicable minimum wage, subject to any lawful exemptions. Each county superintendent from a participating school system may select up to 60 students to participate in the program, which must meet specifications outlined in the enacted legislation. Upon completion of the program, each eligible student must receive a skills certificate that the department issues. The department and the Maryland State Department of Education must (1) work together to explore options for increasing the availability of and access to youth apprenticeship programs based on other states and countries' experiences, as well as the results of the program and (2) by December 1, 2016, and December 1, 2017, report jointly to the Governor and the General Assembly regarding the effectiveness of the program and other specified items. The enacted legislation authorizes the department and the Maryland State Department of Education to jointly adopt regulations to implement the program.

The department indicates that its staff consulted with staff from the Maryland State Department of Education to develop these regulations. Due to time constraints, the department was unable to obtain formal approval from the Maryland State Board of Education before submitting the regulations for publication.

Summary of Regulations

Regulation .01 describes the scope of the new chapter of regulations by specifying that general apprenticeship program requirements under COMAR 09.12.42 and 09.12.43 do not apply to a youth apprenticeship offered under Apprenticeship Maryland, except for an employer that

(1) already operates an apprenticeship program that has been approved by the council and (2) elects to have the youth apprenticeship program approved through the general apprenticeship program process and guidelines. The general apprenticeship program requirements under COMAR 09.12.42 relate to selection of apprentices based on equal opportunity guidelines, while the requirements under COMAR 09.12.43 relate more generally to requirements for apprenticeship programs in the State.

Regulation .02 defines “Apprenticeship Maryland,” identifies the relevant entities involved in the program’s implementation (“Council,” “DLLR,” “MSDE,” and “Secretary”), and defines the terms “eligible employer,” “youth apprentice,” and “eligible career track.” The definitions for “Apprenticeship Maryland,” “eligible employer,” and “eligible career track” mirror the definitions in § 11-603(a) of the Labor and Employment Article. The definition of “youth apprentice” builds off of the definition of “eligible student” under § 11-603(a)(4) and adds the specification that the eligible student have been selected to participate in the program by the county superintendent from a participating school system.

Regulation .03 requires an employer seeking to be designated as an “eligible employer” to (1) apply in writing on an application form provided by the department to the council and the Secretary and (2) provide other information and materials as requested by the department and the Maryland State Department of Education.

Regulation .04 specifies the review and approval process for applications for “eligible employer” designation under the program. Section A requires the council, in consultation with the Commissioner of Labor and Industry, to consider the application and any supporting materials. Section B requires the council to consider the application based on criteria that the department and the Maryland State Department of Education develop. Section C specifies that, in the event of a disagreement between the council and the Commissioner about whether an application should be approved, the Secretary shall resolve the dispute in accordance with the existing process for handling disputes over general apprenticeship applications.

- Regulation .05 establishes basic requirements for eligible employers.
- Regulation .06 requires an eligible employer to use a “youth apprenticeship agreement” that the department provides.
- Regulation .07 authorizes an eligible employer to request to dismiss a youth apprentice who does not comply with the employer’s work rules or the requirements of the program if the employer follows the dismissal requirements that the department and the Maryland State Department of Education develop.
- Regulation .08 authorizes a youth apprentice to file a complaint with the Secretary against an eligible employer and authorizes the Secretary to conduct an investigation and take appropriate action.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 2-105 of the Business Regulation Article and § 11-603(k) of the Labor and Employment Article as statutory authority for the regulations. Section 2-105 of the Business Regulation Article, in part, authorizes the Secretary of Labor, Licensing, and Regulation to adopt regulations for the Office of the Secretary. Section 11-603(k) of the Labor and Employment Article – enacted by Chapter 140 of the Acts of 2015 – authorizes the department to jointly adopt regulations with the State Department of Education.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Emergency Status

The department requests emergency status beginning December 28, 2015, and expiring May 31, 2016. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review.

The department initially indicated the emergency status was necessary to implement Chapter 646 of 2014 – legislation that established the Youth Apprenticeship Advisory Committee. After speaking with committee counsel, the department wishes revise its justification for emergency status to reflect Chapter 140 of 2015 as the appropriate authority.

Technical Corrections and Special Notes

The Department of Legislative Services advised the department that Regulation .02B failed to list all defined terms in alphabetical order, as is standard practice. The department has agreed to revise its submission to list “eligible career track” as definition (4) and to renumber definitions (5) through (8).

In addition, Regulation .04C establishes a process for resolving a dispute between the council and the Commissioner over an employer’s application to be designated as an “eligible employer.” The regulation specifies that the Secretary will resolve any such dispute “in accordance with § 11-405(d) of the Labor and Employment Article.” This section dictates the method of resolving disputes between the council and the division, rather than the Commissioner. Although the difference between the Commissioner and the division is worth noting, it does not likely create a problematic inconsistency.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement provisions of Chapter 140 of 2015 that establish an apprenticeship pilot program, Apprenticeship Maryland. The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs that there is no impact beyond the fiscal and policy note estimate for Chapter 140 of 2015 (House Bill 942), which assumed that general fund expenditures by the Department of Labor, Licensing, and Regulation increase by \$48,800 in fiscal 2016, \$42,300 in fiscal 2017, and \$44,100 in fiscal 2018 for a contractual position to develop the pilot program, approve apprenticeship positions, and coordinate with other agencies and school systems.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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