

Regular Session, 2010

SENATE BILL NO. 537

BY SENATOR NEVERS

WORKFORCE COMMISSION. Provides relative to apprentices. (8/15/10)

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AN ACT

To amend and reenact R.S. 23:381(1), 382, 383, 384(A), (B)(2), and (C), 385,386, 387, 388(B), 389, 390, and 392(B) and (D), relative to apprentices; to provide for representation on the apprenticeship council; to provide for terms of those serving on the council; to provide relative to the apprenticeship council and its recommendations; to provide for the appointment of a director of apprenticeship who is not subject to council approval; to provide relative to powers and duties of the director of the council; to provide relative to apprenticeship programs; to provide for apprenticeship committees; to provide for definition of an apprentice; to provide as to the content of apprentice agreements; to provide for the approval of apprentice agreements; to provide with respect to a rotation of employers; to provide with respect to controversies and complaints; to provide for civil penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:381(1), 382, 383, 384(A), (B)(2), and (C), 385, 386, 387, 388(B), 389, 390, and 392(B) and (D) are hereby amended and reenacted to read as follows:

§381. Purposes

1 The purposes of this Chapter are:

2 (1) To open to ~~young~~ people the opportunity to obtain training that will equip  
3 them for profitable employment and citizenship;

4 \* \* \*

5 §382. Apprenticeship council

6 A. The executive director shall appoint an apprenticeship council, composed  
7 of three representatives each from employer and employee organizations  
8 respectively, and of two representatives of the general public. The three employer  
9 representatives shall be selected from lists supplied by employer organizations which  
10 are participating in bona fide apprenticeship programs. **The three employee**  
11 **representatives shall be selected from among nominations submitted by the**  
12 **Louisiana AFL-CIO.** The state official in charge of trade and industrial education  
13 shall, ex officio, be a member of the said council. ~~The terms of office of the~~  
14 ~~members of the apprenticeship council first appointed by the executive director shall~~  
15 ~~expire as designated by the executive director at the time of making the appointment:~~  
16 ~~one representative each of employers, employees, and the public being appointed for~~  
17 ~~one year; one representative each of employers, employees, and the public being~~  
18 ~~appointed for two years; and one representative each of employers and employees~~  
19 ~~for three years. Thereafter, each~~ **Each** member shall be appointed for a term of three  
20 years. Any member appointed to fill a vacancy occurring prior to the expiration of  
21 the term of his predecessor shall be appointed for the remainder of the said term.  
22 Each member of the council not otherwise compensated by public monies, shall be  
23 reimbursed for transportation and shall be paid thirty-five dollars per day for each  
24 day spent in attendance at meetings of the apprenticeship council.

25 B. The apprenticeship council shall meet at the call of the executive director  
26 **or the director of apprenticeship** and shall aid in formulating policies for the  
27 effective administration of this Chapter. Subject to the approval of the executive  
28 director, the apprenticeship council ~~shall establish~~ **may recommend** standards and  
29 procedures for registration and de-registration of apprenticeship programs in

1 conformity with established programs approved by the ~~Bureau of Apprenticeship~~  
 2 ~~Training~~ **Office of Apprenticeship**, United States Department of Labor, and for  
 3 approval of apprenticeship agreements which in no case shall be lower than those  
 4 prescribed by this Chapter and by the ~~Bureau of Apprenticeship Training~~ **Office of**  
 5 **Apprenticeship**, United States Department of Labor, or lower than approved  
 6 national standards; shall issue such rules and regulations as may be necessary to  
 7 carry out the intent and purposes thereof, and shall perform such other functions as  
 8 the executive director may direct. Not less than once a year the apprenticeship  
 9 council shall make a report, through the executive director, of its activities and  
 10 findings to the legislature and to the public.

11 §383. Director of apprenticeship

12 The ~~secretary~~ **executive director or his designee** shall appoint a director of  
 13 apprenticeship, ~~which appointment shall be subject to the confirmation of the state~~  
 14 ~~apprenticeship council by a majority vote.~~ The ~~secretary~~ **executive director** is  
 15 further authorized to appoint and employ such clerical, technical, and professional  
 16 help as shall be necessary to effectuate the purposes of this Chapter.

17 §384. Powers and duties of director

18 A. The director, under the supervision of the executive director and with the  
 19 advice and guidance of the apprenticeship council, is authorized to administer the  
 20 provisions of this Chapter. ~~He~~ **The director** shall, in cooperation with the  
 21 apprenticeship council, set up conditions and training standards for apprentice  
 22 agreements, which shall in no case be lower than those prescribed by this Chapter  
 23 and by the ~~Bureau of Apprenticeship Training~~ **Office of Apprenticeship**, United  
 24 States Department of Labor, or lower than approved national standards.

25 B. The director is authorized:

26 \* \* \*

27 (2) To approve, if ~~in his opinion approval is for~~ **it is in** the best interest of the  
 28 apprentice, any apprentice agreement which meets the standards established under  
 29 this Chapter;

\* \* \*

C. The administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of local programs, acting under guidelines established by the Office of Apprenticeship, U. S. Department of Labor, ~~Bureau of Apprenticeship and Training~~.

§385. Apprenticeship programs; registration and function

A. An apprenticeship program is defined as a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices that includes such matters as the requirement for a written apprenticeship agreement.

~~A~~ B. An apprenticeship program shall be registered in any trade or group of trades in accordance with this Chapter and with the standards of the ~~Bureau of Apprenticeship Training~~ Office of Apprenticeship, United States Department of Labor. An apprenticeship program shall cooperate with ~~school~~ educational authorities in regard to the education of apprentices; shall establish a schedule of operations; shall establish wage rates and working conditions for apprentices; ~~and~~ shall specify the ratio of apprentices to ~~journeymen~~ journey workers employed in any trade in accordance with this Chapter and the ~~Bureau of Apprenticeship Training~~ Office of Apprenticeship, United States Department of Labor; and shall adjust apprenticeship disputes.

~~B.~~ An apprenticeship program may be "joint", meaning it is composed of an equal number of representatives of the employers and of the employees represented by bona fide collective bargaining agencies and has been established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. "Unilateral" or "nonjoint" shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

C. An apprenticeship committee is defined as those persons designated

1 by the sponsor to administer the program. A committee may be joint or non-  
2 joint, as follows:

3 (1) A joint committee is composed of an equal number of representatives  
4 of the employer or employers and of the employees represented by a bona fide  
5 collective bargaining agent or agents.

6 (2) A non-joint committee, which may also be known as a unilateral or  
7 group non-joint committee, has employer representatives, and may include  
8 employees, but does not have a bona fide collective bargaining agent as a  
9 participant.

10 §386. Apprentice defined

11 The term "apprentice" as used in this Chapter means is defined as a person  
12 worker at least sixteen years of age, who is employed to learn an apprenticeable  
13 occupation and who has entered into a written apprentice agreement with an  
14 employer, an association of employers, or an organization of employees, providing  
15 for not less than two thousand hours of reasonably continuous employment, and for  
16 participation in an approved program of training through employment and through  
17 education in related and supplemental subjects.

18 §387. Contents of apprentice agreements

19 Every apprentice agreement entered into under this Chapter shall contain all  
20 of the following:

21 ~~(1) The names of the contracting parties;~~ Names and signatures of the  
22 contracting parties, including the apprentice and the program sponsor or  
23 employer, and the signature of a parent or guardian, if the apprentice is a  
24 minor.

25 ~~(2) The date of birth of the apprentice;~~ The date of birth and, on a  
26 voluntary basis, the Social Security Number of the apprentice.

27 ~~(3) A statement of the trade, craft, or business which the apprentice is to be~~  
28 ~~taught, and the time at which the apprenticeship will begin and end;~~ Contact  
29 information of the program sponsor and the registration agency.

1           (4) ~~A statement showing the number of hours to be spent by the apprentice~~  
2           ~~in work and the number of hours to be spent in related and supplemental instruction,~~  
3           ~~which instruction shall not be less than 144 hours per year. Provided that in no case~~  
4           ~~shall the combined weekly hours of work and of required related and supplemental~~  
5           ~~instruction of the apprentice exceed the maximum number of hours of work~~  
6           ~~prescribed by law for a person of the age of the apprentice; **A statement of the**~~  
7           ~~**occupation in which the apprentice is to be trained, the beginning date, and the**~~  
8           ~~**term or duration of the apprenticeship.**~~

9           (5) ~~A statement setting forth a schedule of the processes in the trade or~~  
10          ~~industry divisions in which the apprentice is to be taught and the approximate time~~  
11          ~~to be spent at each process; **A statement setting forth all of the following:**~~

12           (a) ~~The number of hours to be spent by the apprentice in work on the~~  
13          ~~job in a time-based program, or a description of the skill sets to be attained by~~  
14          ~~completion of a competency-based program, including the on the job learning~~  
15          ~~component, or the minimum number of hours to be spent by the apprentice and~~  
16          ~~a description of the skill sets to be attained by completion of a hybrid program.~~

17           (b) ~~The number of hours to be spent in related instruction in technical~~  
18          ~~subjects related to the occupation, which shall not be less than one hundred~~  
19          ~~forty-four hours per year.~~

20          (6) ~~A statement of the graduated scale of wages to be paid the apprentice and~~  
21          ~~whether the required school time shall be compensated; **A statement setting forth**~~  
22          ~~**a schedule of work processes in the occupation or industry division in which the**~~  
23          ~~**apprentice is to be trained and the approximate time to be spent at each process.**~~

24          (7) ~~A statement providing for a period of probation of not more than 500~~  
25          ~~hours of employment and instruction extending over not more than four months,~~  
26          ~~during which time the apprentice agreement shall be terminated by the director at the~~  
27          ~~request in writing of either party, and providing that after such probationary period~~  
28          ~~the apprentice agreement may be terminated by the director by mutual agreement of~~  
29          ~~all parties thereto, or cancelled by the director for good and sufficient reason; **A**~~

1 statement of the graduated scale of wages to be paid to the apprentice and  
2 whether or not the required related instruction is compensated.

3 ~~(8) A provision that all controversies or differences concerning the apprentice~~  
4 ~~agreement which cannot be adjusted in accordance with R.S. 23:385 shall be~~  
5 ~~submitted to the director for determination, as provided for in R.S. 23:390;~~

6 Statements providing all of the following:

7 (a) For a specific period of probation during which the apprenticeship  
8 agreement may be cancelled by either party to the agreement upon written  
9 notice to the registration agency, without adverse impact on the sponsor.

10 (b) That, after the probationary period, either of the following may  
11 occur regarding the agreement:

12 (i) It may be cancelled at the request of the apprentice.

13 (ii) It may be suspended or cancelled by the sponsor, for good cause  
14 only, with due notice to the apprentice and a reasonable opportunity for  
15 corrective action, and with written notice to the apprentice and to the  
16 registration agency of the final action taken.

17 ~~(9) A provision that an employer who is unable to fulfill his obligation under~~  
18 ~~the apprentice agreement may, with the approval of the director, transfer such~~  
19 ~~contract to any other employer, provided that the apprentice consents and that such~~  
20 ~~other employer agrees to assume the obligations of the apprentice agreement;~~

21 ~~(10)~~(9) Such additional terms and conditions as may be prescribed or  
22 approved by the director, not inconsistent with the provisions of this Chapter and  
23 those established by the ~~Bureau of Apprenticeship Training~~ Office of  
24 Apprenticeship, United States Department of Labor.

25 §388. Approval of apprentice agreements; signature

26 \* \* \*

27 B. Every apprentice agreement shall ~~be signed by the employer, by an~~  
28 ~~association of employers, or an organization of employees~~ include the names and  
29 signatures of the contracting parties, as provided in R.S. 23:389, ~~and by the~~

1        ~~apprentice, and if the apprentice is a minor, **the name and signature of a parent or**~~  
 2        ~~**legal guardian** by the minor's father; however, if the father is dead or legally~~  
 3        ~~incapable of giving consent or has abandoned his family, then by the minor's mother;~~  
 4        ~~if both father and mother are dead or legally incapable of giving consent, then by the~~  
 5        ~~tutor of the minor. If the minor is without a tutor, a tutor ad hoc may be appointed,~~  
 6        ~~in the manner provided by Article 313\* of the Civil Code, who shall have the~~  
 7        ~~authority to consent to and sign the apprentice agreement.~~

\*        \*        \*

9        §389. Rotation of employment

10        For the purpose of providing greater diversity of training or continuity of  
 11        employment, any apprentice agreement made under this Chapter may, ~~in~~ **at** the  
 12        discretion of the director of apprenticeship, be signed by an association of employers  
 13        or an organization of employees instead of by an individual employer. In such a  
 14        case, ~~the apprentice agreement~~ **apprenticeship program standards** shall expressly  
 15        provide that the association of employers or organization of employees does not  
 16        assume the obligation of an employer but agrees to use its best endeavors to procure  
 17        employment and training for the apprentice with one or more employers who will  
 18        accept full responsibility for all the terms and conditions of employment and training  
 19        set forth in the agreement between the apprentice and employer association or  
 20        employee organization during the period of each employment. The ~~apprentice~~  
 21        ~~agreement~~ **apprenticeship program standards** in such a case shall also expressly  
 22        provide for the transfer of the apprentice, subject to the approval of the director, to  
 23        such employer or employers who shall sign a written agreement with the apprentice,  
 24        and, if the apprentice is a minor, with his parent or ~~tutor~~ **legal guardian**, as specified  
 25        in R.S. 23:388 contracting to employ the apprentice for the whole or a definite part  
 26        of the total period of apprenticeship under the terms and conditions of employment  
 27        and training set forth in the agreement entered into between the apprentice and  
 28        employer association or employee organization.

29        §390. Settlement of controversies or complaints



1           A. Upon the complaint of any interested person or upon his own initiative,  
 2 the director may investigate to determine if there has been a violation of the terms  
 3 of an apprentice agreement made under this Chapter; ~~he may also~~ **and** hold hearings,  
 4 inquiries, and other proceedings necessary to such investigations and determination.  
 5 The director shall investigate programs only as necessary to establish compliance,  
 6 and then only upon proper notice. The parties to such agreement shall be given a fair  
 7 and impartial hearing, after reasonable notice thereof. All hearings, investigations,  
 8 and determinations shall be made under authority of reasonable rules and procedure  
 9 prescribed by the apprenticeship council, subject to the approval of the ~~secretary~~  
 10 **executive director**.

11           B. The determination of the director shall be filed with the ~~secretary~~  
 12 **executive director**. If no appeal therefrom is filed with the ~~secretary~~ **executive**  
 13 **director** within twenty days after the date thereof, such determination shall become  
 14 the order of the ~~secretary~~ **executive director**. Any person aggrieved by any  
 15 determination or action of the director may appeal therefrom to the ~~secretary~~  
 16 **executive director** who shall hold a hearing thereon, after due notice to the  
 17 interested parties. Orders and decisions of the ~~secretary~~ **executive director** shall be  
 18 prima facie lawful and reasonable if supported by reasonable and competent  
 19 evidence. Any party to an apprentice agreement aggrieved by an order or decision  
 20 of the ~~secretary~~ **executive director** may appeal to the courts on questions of law.  
 21 The decision of the ~~secretary~~ **executive director** shall be conclusive if no appeal  
 22 therefrom is filed within thirty days after the date of the order or decision.

23           C. No person shall institute any action for the enforcement of any apprentice  
 24 agreement, or for damages for the breach thereof, unless ~~he has first exhausted~~ all  
 25 the administrative remedies provided in this Section **have first been exhausted**.

\* \* \*

27 §392. Civil penalties

\* \* \*

29           B. Civil penalties may be imposed only by a ruling of the ~~assistant secretary~~

1            ~~of the office of unemployment insurance administration~~ **director of the office of**  
2            **workforce development** pursuant to an adjudicatory hearing held in accordance  
3            with the Administrative Procedure Act.

4    \*            \*            \*

5            D. The ~~assistant secretary of the office of unemployment insurance~~  
6            ~~administration~~ **director of the office of workforce development** may institute civil  
7            proceedings in the appropriate district court for the principal place of business of the  
8            employer to enforce his rulings or seek injunctive relief to restrain and prevent  
9            violations of the provisions of this Chapter or of the rules and regulations adopted  
10           under the provisions of this Chapter. The court shall award attorney fees and court  
11           costs to the prevailing party. In the event judgment is rendered in said court  
12           affirming the civil penalties assessed, the court shall also award to the office of  
13           unemployment insurance administration judicial interest on said penalties from the  
14           date of such judgment until paid.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Mary Dozier O'Brien.

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DIGEST

Present law provides relative to apprentices and apprenticeships and requires three employee  
representatives to the apprenticeship council.

Proposed law provides that the three employee representatives shall be selected from among  
nominations from the AFL-CIO.

Present law provides for staggered initial terms for those on the council; followed by terms  
of three years.

Proposed law provides for the three year terms.

Present law uses the term "Bureau of Apprenticeship Training" in the U.S. Department of  
Labor.

Proposed law uses the new name of the entity, which is the Office of Apprenticeship.

Present law uses the term "secretary" throughout.

Proposed law replaces that term with "executive director," referring to the person in charge  
of the workforce commission.

Present law provides that the secretary shall appoint a director of apprenticeship who shall  
be subject to the approval by a majority of the apprenticeship council.

Proposed law provides that the executive director or his designee shall appoint the director of apprenticeship, and deletes the requirement of approval by the council.

Present law contains no definition of an apprenticeship program.

Proposed law defines an apprenticeship program as a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including the requirement for a written agreement.

Present law includes language regarding joint apprenticeship programs, unilateral programs, and non-joint programs.

Proposed law defines a joint apprenticeship committee and a non-joint apprenticeship committee.

Present law contains a definition of an apprentice.

Proposed law defines an apprentice as a person, at least 16 years of age, who is employed to learn an apprenticeable occupation, and who has entered into a written apprenticeship agreement.

Present law provides for the requirements for a valid apprenticeship agreement.

Proposed law removes the previous requirements and provides new requirements, including the following provisions:

1. Names and signatures of contracting parties.
2. Date of birth of apprentice and SSN, on a voluntary basis.
3. Contact information of the program sponsor and the registration agency.
4. Statement of the occupation for which the person is apprenticing.
5. Statement detailing the hours to be completed and the skills to be attained, whether either or both are required.
6. Statement setting forth the schedule of work processes.
7. Statement of wages.
8. Statement regarding the probationary period and how the agreement may be cancelled or suspended.
9. Any such additional terms and conditions.

Present law provides that apprenticeship agreements shall be signed by the employer, by an association of employers or an organization of employees, and the apprentice, with lengthy qualifications if the apprentice is a minor.

Proposed law provides that the agreement shall include the names and signatures of the contracting parties, and if the apprentice is a minor, name and signature of a parent or legal guardian.

Present law provides with respect to the rotation of employment for an apprentice.

Proposed law provides that such rotations shall be in accordance with apprenticeship program standards.

Present law provides that civil penalties may be imposed and civil proceedings may be instituted by the secretary of the office of unemployment insurance administration.

Proposed law provides that these duties shall be left to the discretion of the director of the office of workforce development.

Effective August 15, 2010.

(Amends R.S. 23:381(1), 382, 383, 384(A), (B)(2), and (C), 385, 386, 387, 388(B), 389, 390, and 392(B) and (D))