

Enrolled
House Bill 2034

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

CHAPTER

AN ACT

Relating to worker training; creating new provisions; amending ORS 660.006, 660.010, 660.020, 660.060, 660.120, 660.126, 660.137, 660.142, 660.158, 660.162 and 660.205; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 660.006 is amended to read:

660.006. (1) ORS 660.002 to 660.210 shall apply to persons, political subdivisions, employer associations, and organizations of employees that agree to conform to its provisions.

(2) Nothing in ORS 660.002 to 660.210 is intended to supersede the civil service or merit systems applicable to state agencies and political subdivisions. Employees of state agencies and political subdivisions may be recognized and registered as apprentices, and may serve on apprenticeship committees when approved by the State Apprenticeship and Training Council in conformity with ORS 660.002 to 660.210. [Where] **If** an individual apprentice who is employed by a state agency or political subdivision wishes to participate in an apprenticeship and training program, the council may approve program standards [which] **that** set forth a progressive wage within the salary structure range for [journeymen] **journeyworker**, employed by [such] **the** state agency or political subdivision.

SECTION 2. ORS 660.010 is amended to read:

660.010. As used in ORS 660.002 to 660.210, unless the context requires otherwise:

(1) "Apprentice" means a worker who is at least 16 years of age, except when a higher minimum age is otherwise required by law, and who is employed to learn an apprenticeable occupation under standards of apprenticeship approved by the State Apprenticeship and Training Council and under an apprenticeship agreement recognized by the council.

(2) "Apprenticeable occupation" means a skilled trade that:

- (a) Is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;
- (b) Is clearly identified and commonly recognized throughout an industry;
- (c) Involves manual, mechanical or technical skills and knowledge that require a minimum of 2,000 hours of on-the-job supervised training; and
- (d) Requires related instruction to supplement the on-the-job training.

(3) "Apprenticeship agreement" means a written agreement between an apprentice and either the [training agent] **apprentice's program sponsor** or the local joint committee **acting as the agent for the program sponsor** that contains the minimum terms and conditions of the employment and training of the apprentice.

(4) "Course of study" means a course of study for the instruction of apprentices or trainees established in accordance with ORS 660.157.

(5) "District school board" includes the boards of community college service districts, education service districts, common school districts and community college districts.

(6) "Employer" means any person employing the services of an apprentice, regardless of whether the person is a party to an apprenticeship agreement with the apprentice.

(7) "**Journeyworker**" means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

[7] (8) "Local joint committee" includes local joint apprenticeship committees, local joint training committees and trade committees.

[8] (9) "Program" means the total system of apprenticeship as operated by a particular local joint committee, including the committee's registered standards and all other terms and conditions for the qualification, recruitment, selection, employment and training of apprentices in that apprenticeable occupation.

[9] (10) "Trainee" means a worker who is at least 16 years of age, except when a higher minimum age is otherwise required by law, and who is to receive, in part consideration for services, complete instruction in an occupation that meets all the requirements of an apprenticeable occupation, except that such occupation requires, in the opinion of the council, less than 2,000 but not less than 1,000 hours of on-the-job supervised training.

[10] (11) "Training agent" means an employer that is registered with a local joint committee and the Apprenticeship and Training Division of the Bureau of Labor and Industries.

SECTION 3. ORS 660.020 is amended to read:

660.020. (1) Every apprentice and either the apprentice's [*training agent*] **program sponsor** or the local joint committee shall sign a written apprenticeship agreement on a form approved by the State Apprenticeship and Training Council or on a form to which the council chairperson may grant interim approval. The agreement shall be signed and registered with the council as soon as practicable, but not later than [90] **45** days after the start of the apprenticeship.

(2) When a training agent is unable or unwilling to fulfill its obligations under an apprenticeship agreement, the local joint committee may approve the transfer of the training agent's obligation under the program standards to a subsequent approved training agent under the same program, with the consent of the apprentice. In such cases, it is not necessary to sign and register a new apprenticeship agreement, notwithstanding the requirements of subsection (1) of this section.

SECTION 4. ORS 660.060 is amended to read:

660.060. To be registered with the State Apprenticeship and Training Council, every apprenticeship or training agreement shall contain:

(1) The names and signatures of the apprentice or trainee and of a parent or guardian if the apprentice or trainee is a minor;

(2) The names and addresses of the appropriate local joint committee and of the council;

(3) The date of birth of the apprentice or trainee;

(4) The beginning date and duration of the apprenticeship or training and the apprenticeable or trainable occupation in which the apprentice or trainee is to be trained;

(5) A statement that the parties to the agreement shall abide by the applicable standards existing as of the date of the agreement, and as amended during the duration of the agreement, and a provision incorporating the standards explicitly or by reference as part of the agreement;

(6) A statement that there is a probationary period **of up to one year or 25 percent of the length of the program, whichever period is shorter**, during which the apprenticeship agreement may be terminated by either party to the agreement upon written notice to the Apprenticeship and Training Division of the Bureau of Labor and Industries;

(7) A statement that after the probationary period the apprenticeship agreement may be canceled at the request of the apprentice or may be suspended, canceled or terminated by the committee for good cause, which includes but is not limited to failure to report to work, nonattendance at

related training, failure to submit work progress reports and lack of response to committee citations, with prior written notice to the apprentice, and with written notice to the apprentice and to the Apprenticeship and Training Division of the Bureau of Labor and Industries of the final action taken by the committee;

(8) A statement that the transfer of an apprentice between apprenticeship programs or within an apprenticeship program must be based on an agreement between the transferring apprentice and the affected apprenticeship committees or program sponsors that includes requirements that:

(a) The transferring apprentice must be provided a transcript of records of related instruction and on-the-job learning by the transferring apprenticeship committee or program sponsor;

(b) The transfer must be within the same occupation as the original apprenticeship program; and

(c) A new apprenticeship agreement must be executed prior to the transfer between program sponsors or within an apprenticeship program;

[(8)] **(9) [Such] Any** additional provisions as the council may deem necessary or advisable to effectuate the policies and duties prescribed and imposed by ORS 660.002 to 660.210, provided *[such]* **that the** provisions are customarily subject to agreement between *[training agents]* **program sponsors or local joint committees** and apprentices or trainees; and

[(9)] **(10)** A waiver by the apprentice granting permission for the release of related training school records to the appropriate joint apprenticeship committee for the purpose of evaluation.

SECTION 5. ORS 660.120 is amended to read:

660.120. (1) The State Apprenticeship and Training Council, **under the direction of the Apprenticeship and Training Division of the Bureau of Labor and Industries**, shall enforce the provisions of ORS 660.002 to 660.210 in order to carry out the intent and purposes of those provisions. *[With the assistance of]* The State Director of Apprenticeship and Training *[and the director's staff]*, **the division and** the council may conduct investigations, issue subpoenas and subpoenas duces tecum, obtain evidence, administer oaths and take testimony in all matters relating to the council's duties and functions as set forth in ORS 660.002 to 660.210 when the information sought is relevant to a lawful investigative purpose and is reasonable in scope. The council **and the division** shall adopt rules for gathering information through subpoenas or testimony. The rules must include procedures through which a party may object to providing information. After being served with a subpoena, if a person refuses, without reasonable cause, to be examined, to answer any question or to produce any document or other thing as required by the subpoena, the **director, the division or the council** may petition the circuit court in the county in which the investigation is pending for an order directing the person to show cause why the person has not complied with the subpoena and should not be held in contempt. The **director, division or council** shall serve the court's order upon the person in the manner provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court shall order the person to comply with the subpoena within such time as the court shall direct and may hold the person in contempt.

(2) **The division, on behalf of** the council, may bring suit in a court of proper jurisdiction in the *[council's own]* name **of the Bureau of Labor and Industries**, or in the name of an apprentice on behalf of the apprentice, through the district attorney or the Attorney General.

(3) The council **and the division** may adopt rules that are reasonably necessary to enforce and administer ORS 660.002 to 660.210. In adopting the rules, the council **and the division** shall comply with ORS chapter 183. In addition, *[where]* **if** the council **and the division** *[finds]* **find** that it would be impractical for a number or all of the local joint committees in the state to develop criteria concerning a particular matter, the council **and the division** may adopt rules on the matter. The *[council's]* rules shall govern on that matter except to the extent that a local joint committee's approved standards contain exceptions.

(4) The council **and the division** also shall:

(a) Establish policy of the program so as to encourage the promotion, expansion and improvement of programs of apprenticeship and training;

(b) Approve and register [*such*] program standards and modifications [*thereto, as*] **to program standards that** are submitted by appropriate local joint committees as provided in ORS 660.126, [*which*] **if the standards and modifications** are in substantial conformity with the statewide standards approved under ORS 660.155;

(c) Establish committees and approve nominations of members and alternates to local joint committees and state joint committees to ensure balanced representation of employer and employee groups;

(d) Deregister standards and terminate entire programs, and remove any or all members of any committee, for inactivity or inadequate activity, or for failure to abide by the provisions of ORS 660.002 to 660.210 or by the rules and policies of the council **and the division**;

(e) Cooperate with interested state and federal agencies, including the Department of Education, **the State Workforce Investment Board** and other providers of related training and curriculum such as community college districts, community college service districts, education service districts and recognized industry programs; **and**

(f) Perform such other functions and duties as are necessary or appropriate to carry out the purposes of ORS 660.002 to 660.210[; *and*].

[*g*] **(5) The council shall** hold at least four regular public meetings each year. Executive sessions shall be held on call of the chairperson, or at the written request of a majority of the members of the council.

SECTION 6. ORS 660.126, as amended by section 1, chapter 15, Oregon Laws 2010, is amended to read:

660.126. (1) Apprenticeship standards shall contain statements of:

(a) The apprenticeable occupation to be taught and a designation of the geographical area or areas in which the standards will apply;

(b) The qualifications required of apprentice applicants and the minimum eligible starting age, which is at least 16 years unless a higher age is required by law;

(c) The outline of work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) The term required for completion of apprenticeship, which shall be consistent with requirements established by industry practice for the development of requisite skills, but in no event shall be less than 2,000 hours of reasonably continuous work experience;

(e) The approximate number of hours to be spent by the apprentice at work and the approximate number of hours to be spent in related and supplemental instruction;

(f) The minimum numeric ratio of [*journeymen*] **journeyworkers** to apprentices consistent with proper supervision, training, safety and continuity of employment, which shall be specifically and clearly stated as to application in terms of job site, workforce, department or plant;

(g) A probationary period [*reasonable in relation to the full apprenticeship term*] **of up to one year or 25 percent of the length of the program, whichever is shorter**, with full credit given for the probationary period toward completion of apprenticeship and with provision that during the probationary period, the apprenticeship agreement may be terminated without cause;

(h) A progressively increasing schedule, showing the percentages of the [*journeyman*] **journeyworker** hourly wage to be paid the apprentice at each level of apprenticeship achieved;

(i) [*Such*] **Any** additional provisions [*as*] **that** the State Apprenticeship and Training Council **and the Apprenticeship and Training Division of the Bureau of Labor and Industries** may, by rule, deem necessary or advisable to effectuate the policies and duties prescribed and imposed by ORS 660.002 to 660.210; and

(j) The content of related training with training objectives.

(2) Notwithstanding subsection (1) of this section, the council **and the division** may approve the inclusion of standards of additional provisions, or of provisions that depart from the requirements

of subsection (1) of this section, when such standards or provisions have been submitted by joint employer and employee groups, or may be part of legitimate bargaining agreements between an employer and employees. In making [its] **the** decision, the council **and the division** shall consider the following factors:

(a) The possibility that the provision might result in curtailment of opportunities for apprentices to receive training or continuity of employment;

(b) The possibility that the provision might result in the diversion of needed qualified applicants for apprenticeship, and particularly of qualified applicants of protected classes, into unskilled or semiskilled jobs for which an adequate supply of labor already exists;

(c) The possibility that the provision might result in disputes among the participants in the programs that might curtail the cooperation necessary to build an adequate, skilled labor force in the State of Oregon;

(d) The need to safeguard the health, safety, continuity of employment and welfare of the apprentices and to ensure the public welfare;

(e) The need to raise the level of skill in each apprenticeable occupation to provide to the public quality goods and services at a fair price and an adequate and skilled workforce for the defense of the nation; and

(f) The need to provide training in the licensed occupations for the protection of the apprentices and of the general public.

(3) The council **and the division** shall adopt rules to allow a local committee to determine the circumstances under which an apprentice electrician, who is working under ORS 479.510 to 479.945 and has completed 6,500 hours of apprenticeship training for licenses requiring 8,000 hours of apprenticeship training or who has completed 5,000 hours of apprenticeship training for licenses requiring 6,000 hours of apprenticeship training, may work without direct supervision during the remainder of the apprenticeship.

SECTION 7. ORS 660.137 is amended to read:

660.137. Every local apprenticeship or training program administered by a local joint committee, or by a trade committee functioning as a local joint committee, shall:

(1) Propose to the State Apprenticeship and Training Council **and the Apprenticeship and Training Division of the Bureau of Labor and Industries** standards for the local program that are in substantial conformity with ORS 660.126 and with the uniform standards, if any, adopted by the state joint committee for that occupation, and recommend to the council **and the division** modifications of the standards.

(2) Administer its program in conformity with its approved standards, with the provisions of ORS 660.002 to 660.210, and with the rules and policies of the council **and the division**. Particularly, the local joint committee shall:

(a) Maintain records of all apprentices in its program, with respect to work experience, instruction on the job, attendance at related instruction and progress, and such other records as may be appropriate or required, and shall submit such reports as the council [or], **division or other** appropriate governmental agencies may require;

(b) Submit to the state joint committee appropriate requests for changes in courses of study for the instruction of apprentices; and

(c) Be responsible for apprentices receiving necessary on-the-job and related instruction, and for all apprenticeship agreements being promptly registered with the council.

(3) Be responsible for the recruitment, qualification, selection, approval and registration of apprentices entering the program, including the evaluation of previous creditable work experience, education and training for which advanced credit must be given, provided that advanced credit may be given for such creditable experience, education and training.

(4) Review and evaluate, at least semiannually, the progress of each apprentice, as to job performance and related instruction, and consistent with the skill acquired, accordingly advance the apprentice to the next level of apprenticeship or hold the apprentice at the same level for a reasonable period, and with reasonable opportunity for corrective action, or terminate the apprentice

from the program for serious or continued inadequate progress and notify the [Apprenticeship and Training Division of the Bureau of Labor and Industries] **council and the division** of the action taken. The council, **the division** and the appropriate training agent shall also be notified of each reentering and of the apprentice's new level on the wage schedule. Recognition for successful completion of apprenticeship shall be evidenced by an appropriate certificate issued by the council.

(5)(a) Determine the qualifications, minimum facilities and training conditions required of an employer to serve as an approved training agent, and approve training agents accordingly;

(b) Make periodic checks of approved training agents to ensure that there are qualified training personnel and that there is adequate supervision on the job, adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction; and

(c) Withdraw approval of training agents when the qualifications are no longer met or when it appears to the committee that the training agent is in violation of the terms of an apprenticeship agreement, standards, provisions of ORS 660.002 to 660.210 or the rules and policies of the council **and the division**.

(6) Determine and redetermine at least annually the average [journeyman] **journeyworker** hourly rate of wage for the purposes of ORS 660.142 and submit the rate to the State Director of Apprenticeship and Training, along with a statement explaining how the determination was made. Training agents that fail or refuse to provide their committees with information shall be terminated as approved training agents. The council **and the division** may withhold approval of a new program or terminate an existing program for failure or refusal by the committee or its training agents to keep the established [journeyman] **journeyworker** hourly rate of wage current and correct. The committee shall retain all records from which a wage determination was made for inspection by the council **and division**, as required by law.

SECTION 8. ORS 660.142 is amended to read:

660.142. (1) A training agent may not pay an apprentice at a rate less than that obtained by applying the schedule, set forth in the applicable standards, at the apprentice's level of apprenticeship, to the [journeyman] **journeyworker** hourly rate of wage currently in effect for [journeymen] **journeyworkers** in the occupation for which the apprentice is being trained, as determined by the appropriate local joint committee.

(2) The [journeyman] **journeyworker** hourly wage rate shall be the average hourly wage currently being paid by the training agents participating in a program to their skilled workers, that is, to those employees with demonstrated knowledge, experience and proficiency in that trade or occupation who are currently performing the type of work for which the apprentice is to be trained. Upon receipt of a committee's determination of its current [journeyman] **journeyworker** hourly rate of wage, the State Director of Apprenticeship and Training shall cause notice of the determination to be promptly mailed to all apprentices and training agents participating in the program. The determination shall be in effect from the date set forth in the determination or, lacking such date, from the first of the month following the mailing of the determination. However, neither the wage determination nor the effective date alters the terms or effect of an existing collective bargaining agreement.

(3) If a higher [journeyman] **journeyworker** hourly wage rate is prescribed by federal or state law for work on a particular project, the higher rate [so established] is controlling for purposes of determining apprentice wages applicable to that particular project.

(4) Nothing stated in ORS 660.002 to 660.210 shall be construed to supersede the minimum wage or overtime provisions of ORS chapters 652 and 653, or the rules adopted under ORS chapter 652 or 653. Anything to the contrary notwithstanding, the entry wage (that wage derived by applying the lowest percentage on the schedule to the current [journeyman] **journeyworker** hourly wage rate) may not be less than the federal or state minimum wage rate, whichever is higher.

(5) The State Apprenticeship and Training Council may make such exceptions to the apprentice wage schedule or [journeyman] **journeyworker** hourly wage rate, and to the minimum numeric ratio

of [journeymen] **journeyworkers** to apprentices, as it deems necessary or advisable to further the operation of apprenticeship and training programs in Department of Corrections institutions.

SECTION 9. ORS 660.158 is amended to read:

660.158. (1) If there is an interstate agreement regarding apprenticeship courses of study between the State Apprenticeship and Training Council and an agency with similar functions in another state:

(a) Any course of study prescribed pursuant to ORS 660.157 is subject to the provisions of the interstate agreement.

(b) Each local joint committee of an occupation that is subject to the interstate agreement shall submit requests for changes in courses of study directly to the council.

(2) [Apprenticeship programs which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of the United States Department of Labor, Bureau of Apprenticeship and Training, or by the apprenticeship agency or council of any other state which has been recognized by the United States Department of Labor, Bureau of Apprenticeship and Training, shall be accorded approval reciprocally by the council if such] **Reciprocal approval for federal purposes shall be accorded to apprentices, apprenticeship programs and standards that are registered by the United States Department of Labor Office of Apprenticeship, or by the registration agency or council of any other state that has been recognized by the United States Department of Labor Office of Apprenticeship, if reciprocal** approval is requested by the [sponsoring entity] **program sponsor**, even [though such] **if the** programs and their standards [may] depart in some respects from the criteria of ORS 660.126 and from the other provisions set forth in ORS 660.002 to 660.210.

(3) Program sponsors seeking reciprocal approval must meet state wage and hour provisions, local wage provisions, apprenticeship ratio standards and licensing requirements.

SECTION 10. ORS 660.162 is amended to read:

660.162. The State Board of Education, in cooperation with the State Apprenticeship and Training Council and the appropriate state joint committee, by rule shall adopt policies, standards and programs to carry out the provisions of ORS 660.002. Such policies, standards or programs may involve any of the following matters:

(1) Development of courses of study for apprentices and trainees in the trade, craft or industrial occupation over which the committee exercises jurisdiction.

(2) Operation of related instruction classes by district school boards and in courses implemented under ORS 660.157 (3).

(3) Development of uniform standards covering occupational qualifications and teacher training requirements for instructors.

(4) Preservice and inservice training for instructors.

(5) Evaluation procedures for determining credit for apprenticeship training toward community college associate degrees.

(6) Defining procedures for granting credit for work experience to instructors, skilled craftsmen or [journeymen] **journeyworkers** toward the requirements of a community college associate degree.

SECTION 11. ORS 660.205 is amended to read:

660.205. (1) There shall be a uniform system of certification in those apprenticeable occupations for which the State Apprenticeship and Training Council determines certification is required. Such certification shall be awarded to apprentices successfully completing such an apprenticeship program and shall signify the apprentice's attainment of the status of [journeyman] **journeyworker**. The council shall prescribe by rule a singular form of certification card for apprenticeable occupations and the conditions for its issuance.

(2) Only the Commissioner of the Bureau of Labor and Industries may prepare or issue or cause to be prepared or issued a card or other form of documentation purporting to certify or otherwise representing the bearer to be a [journeyman] **journeyworker** in an apprenticeable occupation.

(3) The commissioner may establish and charge a fee for the issuance of certification in an amount not to exceed \$25.

(4) The provisions of this section first apply to apprentices who successfully complete an apprenticeship program after January 1, 1990.

SECTION 12. Sections 13 and 14 of this 2011 Act are added to and made a part of ORS 660.002 to 660.210.

SECTION 13. (1) Every local apprenticeship or training program administered by a local joint committee or by a trade committee functioning as a local joint committee must have at least one registered apprentice.

(2) Notwithstanding subsection (1) of this section, a local apprenticeship or training program administered by a local joint committee or by a trade committee functioning as a local joint committee is not required to have at least one registered apprentice during the period from:

(a) The date the standards for the program are registered and the date the first apprentice is registered under those standards or one year from the date the standards are registered, whichever period is shorter; or

(b) The date the committee graduates an apprentice under a set of standards and the date the next apprentice is registered under those standards or one year from the date the committee graduates an apprentice under a set of standards, whichever period is shorter.

SECTION 14. (1) The Apprenticeship and Training Division of the Bureau of Labor and Industries shall evaluate the performance of registered apprenticeship programs.

(2) Factors to be used when conducting the evaluation required by subsection (1) of this section must include, but are not limited to:

(a) Quality assurance assessments;

(b) Equal Employment Opportunity Commission compliance reviews; and

(c) Completion rates.

(3) Any additional factors used by the division in the evaluation of program performance must adhere to the goals and policies of the United States Department of Labor specified in 29 C.F.R. 29 and with guidance issued by the United States Department of Labor Office of Apprenticeship.

(4) To evaluate completion rates under this section, the division shall compare the completion rate of the program under review with the national average for completion rates. Based on the completion rate review, the division shall provide technical assistance to promote higher completion rates to programs with a completion rate lower than the national average.

(5) Cancellation of an apprenticeship agreement during the probationary period shall not have an impact on the completion rate of the program.

SECTION 15. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House February 28, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 12, 2011

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Peter Courtney, President of Senate

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

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Kate Brown, Secretary of State