

Regular Session, 2014

SENATE BILL NO. 482

BY SENATORS HEITMEIER, JOHNS, MARTINY AND MURRAY

VOCATIONAL REHAB. Provides relative to the Louisiana Rehabilitation Services.
(gov sig)

1 AN ACT

2 To amend and reenact R.S. 23:3001, 3021, the introductory paragraph of R.S. 23:3022,

3 3023(A), (D), and (E), 3032(A), 3041, 3042(5), 3043, 3044(A), (B), and (F)(1) and

4 (2), and 3045, and to enact R.S. 23:3022(8) and (9), 3023 (F), (G), and (H), 3042(8)

5 and (9), and 3044(F)(3), and to repeal R.S. 23:3031, relative to Louisiana

6 Rehabilitation Services; to provide for acceptance of federal act to promote

7 vocational rehabilitation; to provide relative to prevention of blindness, vocational

8 training, and rehabilitation; to provide relative to definitions; to provide relative to

9 expenditures; to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:3001, 3021, the introductory paragraph of R.S. 23:3022, 3023(A),

12 (D), and (E), 3032(A), 3041, 3042(5), 3043, 3044(A), (B), and (F)(1) and (2) and 3045 are

13 hereby amended and reenacted , and R.S. 23:3022(8) and (9), 3023 (F), (G), and (H),

14 3042(8) and (9), and 3044(F)(3) are hereby enacted to read as follows:

15 §3001. Acceptance of federal act to promote vocational rehabilitation

16 The state of Louisiana accepts the provisions and benefits of the ~~act of~~

17 ~~congress~~ **Act of Congress** entitled "An act to provide for the promotion of vocational

1 rehabilitation of persons disabled in industry or otherwise and their return to civil
2 employment", 29 U.S.C.A. §701 et seq., and will observe and comply with all
3 requirements of such act.

4 * * *

5 §3021. Prevention of blindness, vocational training, and rehabilitation

6 **A.** The Louisiana ~~Workforce Commission~~ **Rehabilitation Services** may
7 establish and administer an adequate system of conservation of sight and prevention
8 of blindness, vocational training, and rehabilitation for the blind and may make ~~the~~
9 **such** rules and regulations necessary for the efficient administration thereof.

10 **B.** **For purposes of this Part, a person who is blind means a person who,**
11 **after examination by a licensed physician skilled in diseases of the eye or by a**
12 **licensed optometrist, has been determined to have not more than 20/200 central**
13 **visual acuity in the better eye with correcting lenses, or an equally disabling loss**
14 **of the visual field as evidenced by a limitation to the field of vision in the better**
15 **eye to such a degree that its widest diameter subtends an angle of no greater**
16 **than twenty degrees.**

17 **C.** **The Louisiana Rehabilitation Services shall submit quarterly reports**
18 **and an annual report to the legislature on the performance of the agency's**
19 **programs for blind persons. This annual report shall be submitted no later**
20 **than sixty days prior to the convening of the regular legislative session.**

21 **D.** **The Louisiana Rehabilitation Services shall be the designated state**
22 **unit as defined by the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq., as**
23 **amended, and Part 361 of Chapter III of Subtitle B of Title 34 of the Code of**
24 **Federal Regulations.**

25 * * *

26 §3022. Powers of the Louisiana ~~Workforce Commission~~ **Rehabilitation Services**

27 The Louisiana ~~Workforce Commission~~ **Rehabilitation Services** may:

28 * * *

29 **(8) Exercise all the duties and responsibilities of the designated state unit**

1 as defined by the Rehabilitation Act 1973, 29 U.S.C. 701, et seq., as amended,
 2 and Part 361 of Chapter III of Subtitle B of Title 34 of the Code of Federal
 3 Regulations.

4 (9) Act as the state licensing agency for the administration of the
 5 Randolph-Sheppard Act and the Business Enterprise Program.

6 §3023. Preference **Priority** to individuals who are blind in operation of concessions
 7 in public buildings

8 A. State agencies, boards, commissions, and institutions owning, maintaining,
 9 **occupying,** or controlling state property shall in all cases give preference **priority**
 10 to individuals who are blind, under the administration of the Louisiana ~~Workforce~~
 11 ~~Commission~~ **Rehabilitation Services,** in the operation of vending stands, vending
 12 machines, and other small business concessions to be operated ~~on the premises~~ **in the**
 13 **portions, or portions thereof, of properties that those state agencies, boards,**
 14 **commissions, and institutions own, maintain, occupy, or control.** No other
 15 vending stands, vending machines, **cafeterias,** or small business concessions shall
 16 be operated on the same premises with vending stands, vending machines, or other
 17 small business concessions operated, or contemplated, under the provisions of this
 18 Section. ~~No~~ **Except as provided under this Part and the Randolph-Sheppard**
 19 **Act, no** individual who is blind, under this Subpart, shall be required to pay any fee,
 20 service charge, or equivalent thereof upon the operation of a vending stand, vending
 21 machines, and other small business concessions in public buildings or premises, nor
 22 shall an individual who is blind be disturbed in the security of the operation of the
 23 vending stand, vending machine, and other small business concession in any way,
 24 without reasonable or just cause.

25 * * *

26 D. ~~The provisions of this Section shall not apply to the New Orleans Home~~
 27 ~~and Rehabilitation Center or the Villa Feliciana Medical Complex within the~~
 28 ~~Department of Health and Hospitals, when operating canteens, vending stands,~~
 29 ~~vending machines, or other such vending services on the premises for clients and~~

1 employees when such operations are provided directly by the institution. The
2 Louisiana Rehabilitation Services shall promulgate, pursuant to the
3 Administrative Procedure Act, and enforce the rules and regulations necessary
4 to establish employment and training targets for persons who are blind or
5 otherwise disabled for all blind vendors employing greater than ten employees
6 and for all businesses servicing facilities under this Part with greater than ten
7 employees. Blind vendors and businesses servicing facilities under this part
8 operating under contracts and permits ratified or issued prior to promulgation
9 of said rules and regulations shall be exempt from said rules and regulations.

10 E. The Louisiana ~~Workforce Commission~~ Rehabilitation Services is hereby
11 authorized to enter into contingency fee contracts for the identification, development,
12 and generation of unassigned income from vending machines located on state,
13 federal, and other property pursuant to the provisions of the Randolph-Sheppard Act
14 and for the identification, development, and generation of job placement and
15 training opportunities for persons who are blind or otherwise disabled on
16 properties owned, maintained, occupied, or controlled by state agencies, boards,
17 commissions, or other institutions. Any such contract shall be awarded pursuant
18 to a request for proposals in accordance with Chapter 16 of Title 39 of the Louisiana
19 Revised Statutes of 1950.

20 F. For any claim or controversy between state agencies, boards,
21 commissions, and institutions regarding the state priority for blind vendors, the
22 generation of unassigned income, or the job placement and training of persons
23 who are blind or disabled not resolved by mutual agreement, a full evidentiary
24 hearing shall be conducted by an impartial and qualified official designated by
25 the Louisiana Rehabilitation Services with no involvement or vested interest in
26 the dispute at issue. The hearing officer shall make a written report of the
27 evidence presented, the laws and rules used in determining a resolution, and the
28 resolution itself. This report shall be issued to all parties within thirty calendar
29 days of the conclusion of the full evidentiary hearing. The decision shall be final

1 and conclusive unless fraudulent, or unless either party institutes a suit
2 pursuant to R.S. 23: 3023(G).

3 G. The Nineteenth Judicial District Court, subject to appeal or review
4 by the First Circuit Court of Appeal or by the Supreme Court, as otherwise
5 permitted in civil cases by law and the state constitution, shall have jurisdiction
6 over any matters in connection with a petition for review of a decision made
7 pursuant to this Subpart, following the exhaustion of administrative remedies
8 as provided by law or regulation.

9 H. The Louisiana Rehabilitation Services shall provide each licensed
10 blind vendor the opportunity for due process for any claim or controversy
11 arising from the operation of the Business Enterprise Program in accordance
12 with the Randolph-Sheppard Act.

13 * * *

14 §3032. Exemption of persons who are blind from license, privilege, or vocational
15 tax; limitation

16 A. Any person who is blind as defined in this ~~Subpart~~ **Part** may exercise the
17 privileges of peddler, news dealer, or lunch counter operator, or may exercise the
18 right to trade, traffic, or sell any merchandise, whether on foot, by vehicle, or in
19 stores, when the stock of goods on hand, or the equipment or capital stock of the
20 enterprises, never exceeds the sum of two thousand dollars. These privileges may be
21 exercised in any of the parishes of the state, including incorporated towns and cities,
22 without the payment of any license, privilege, or vocational tax, which is presently
23 or may be hereafter imposed by law, by the state, or any parish or municipality.

24 * * *

25 §3041. Purpose

26 The purpose of this Part is to provide for the enhancement of programs for
27 persons disabled through blindness by the establishment of a trust fund in the state
28 treasury to be funded by monies received by the Louisiana ~~Workforce Commission~~
29 ~~through contractual arrangements with providers who place~~ **Rehabilitation Services**

1 **from certain vending stands**, vending machines, **cafeterias, and other small**
2 **business concessions** on state, federal, and other property **pursuant to the**
3 **Randolph-Sheppard Act and other sources**. The purpose of the Blind Vendors
4 Trust Fund is to provide assistance to Louisiana citizens who are legally blind and
5 who participate in the Blind Enterprise Program established through the federal
6 Randolph-Sheppard Act.

7 §3042. Definitions

8 As used in this Chapter, the following terms shall have the following
9 meanings:

10 * * *

11 (5) "Department" means the Louisiana ~~Workforce~~ Commission
12 **Rehabilitation Services**.

13 * * *

14 (8) **"Active Participation" means an ongoing process of good faith**
15 **negotiations between the Louisiana Rehabilitation Services and the Louisiana**
16 **Blind Vendors Elected Committee to achieve joint planning of policies,**
17 **procedures, standards, rules, and regulations affecting the overall operation of**
18 **the Business Enterprise Program prior to implementation by the Louisiana**
19 **Rehabilitation Services. The Louisiana Rehabilitation Services shall have final**
20 **authority and responsibility in all decisions relative to the administration and**
21 **operation of the Business Enterprise Program. Active participation shall**
22 **include those things provided for in 34 CFR 395.14 (b)(1), (3), and (4).**

23 (9) **"Management Services" means supervision, inspection, quality**
24 **control, consultation, accounting, regulating, in-service training, and other**
25 **related services provided on a systematic basis to support and improve vending**
26 **facilities operated by blind vendors. Management services do not include those**
27 **services or costs which pertain to the on-going operation of an individual facility**
28 **after the initial establishment period.**

29 §3043. Blind Vendors Trust Fund

1 §3045. Expenditures

2 A. Money in the trust fund from vending machines located on federal
3 property shall be distributed for the primary purpose of the establishment and
4 maintenance of retirement or pension plans, for health insurance, and contributions
5 for the provisions of paid sick leave and vacation time for blind vendors, if approved
6 by majority vote of blind vendors licensed by the department after the department
7 has provided to each vendor information on all matters relevant to such purposes.
8 Income not expended for the primary purpose as set out in this Subsection shall be
9 used for the maintenance and replacement of equipment, the purchase of new
10 equipment, management services, and securing a fair return to vendors, or as
11 provided by state or federal guidelines **with the active participation of the Blind**
12 **Vendors Trust Fund Board.**

13 B. Money in the trust fund from vending machines located on state-owned
14 property or on property leased by the state or any state agency, or on other property
15 shall be distributed for any purpose ~~associated~~ **consistent** with the provisions of the
16 Randolph-Sheppard Act as may be determined by the department **with the active**
17 **participation of the Blind Vendors Trust Fund Board.**

18 * * *

19 Section 2. The Louisiana Rehabilitation Services shall promulgate, pursuant to the
20 Administrative Procedure Act, rules and regulations implementing the provisions of this Act
21 no later than July 1, 2015.

22 Section 3. R.S. 23:3031 is hereby repealed.

23 Section 4. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Carla S. Roberts.

DIGEST

Heitmeier (SB 482)

Present law provides the state of Louisiana accepts an act of Congress to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

Present law provides the La. Workforce Commission (LWC) may establish and administer an adequate system of conservation of sight and prevention of blindness, vocational training, and rehabilitation for the blind and may make the rules and regulations necessary for the efficient administration thereof.

Proposed law retains present law but changes the administrator of the program from the La. Workforce Commission to La. Rehabilitation Services.

Present law provides the term "any person who is blind" used in present law, shall extend to any person, who is totally blind in both eyes, or to any person whose sight with the use of both eyes is so impaired as to make the sense of sight of no practical benefit or help in the pursuit of business, or in the course of earning a living.

Present law provides money in the trust fund from vending machines located on federal property shall be distributed for the primary purpose of the establishment and maintenance of retirement or pension plans, for health insurance, and contributions for the provisions of paid sick leave and vacation time for blind vendors, if approved by majority vote of blind vendors licensed by the department after the department has provided to each vendor information on all matters relevant to such purposes. Present law further provides that income not expended for the primary purpose as set out in present law shall be used for the maintenance and replacement of equipment, the purchase of new equipment, management services, and securing a fair return to vendors, or as provided by state or federal guidelines.

Present law provides money in the trust fund from vending machines located on state-owned property or on property leased by the state or any state agency, or on other property shall be distributed for any purpose associated with the provisions of the Randolph-Sheppard Act as may be determined by LWC.

Proposed law clarifies that the vending machines are to be located on the portions, or portions thereof, of properties that those state agencies, boards, commissions, and institutions own, maintain, occupy, or control.

Proposed law provides that a person who is blind means a person who, after examination by a licensed physician skilled in diseases of the eye or by a licensed optometrist, has been determined to have not more than 20/200 central visual acuity in the better eye with correcting lenses, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees.

Proposed law provides that the La. Rehabilitation Services shall submit quarterly reports and an annual report to the legislature on the performance of the agency's programs for blind persons. Proposed law provides that this annual report shall be submitted no later than sixty days prior to the convening of the regular legislative session.

Proposed law provides that the Louisiana Rehabilitation Services shall be the designated state unit as defined by the Rehabilitation Act of 1973.

Present law provides that present law shall not apply to the New Orleans Home and Rehabilitation Center or the Villa Feliciana Medical Complex within the Department of Health and Hospitals, when operating canteens, vending stands, vending machines, or other such vending services on the premises for clients and employees when such operations are provided directly by the institution.

Proposed law removes prohibition and makes it applicable to the New Orleans Home and Rehabilitation Center or the Villa Feliciana Medical Complex within the Department of Health and Hospitals.

Proposed law provides that the Louisiana Rehabilitation Services shall promulgate, pursuant to the APA, and enforce the rules and regulations necessary to establish employment and training targets for persons who are blind or otherwise disabled for all blind vendors employing greater than ten employees and for all businesses servicing facilities under proposed law with greater than ten employees. Proposed law provides blind vendors and businesses servicing facilities under this part operating under contracts and permits ratified or issued prior to promulgation of said rules and regulations shall be exempt from said rules and regulations.

Proposed law provides that, for any claim or controversy between state agencies, boards, commissions, and institutions regarding the state priority for blind vendors, the generation of unassigned income, or the job placement and training of persons who are blind or disabled not resolved by mutual agreement, a full evidentiary hearing shall be conducted by an impartial and qualified official designated by the Louisiana Rehabilitation Services with no involvement or vested interest in the dispute at issue. Proposed law provides that the hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. Proposed law provides that the report of the hearing officer shall be issued to all parties within 30 calendar days of the hearing and shall be final and conclusive unless fraudulent, or unless either party institutes a suit before the 19th Judicial District Court.

Proposed law provides for definitions as follows:

- A. "Active Participation" means an ongoing process of good faith negotiations between the La. Rehabilitation Services and the La. Blind Vendors Elected Committee to achieve joint planning of policies, procedures, standards, rules, and regulations affecting the overall operation of the Business Enterprise Program prior to implementation by the La. Rehabilitation Services. The La. Rehabilitation Services shall have final authority and responsibility in all decisions relative to the administration and operation of the Business Enterprise Program.
- B. "Management Services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. Management services do not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

Present law provides for the Blind Vendors Trust Fund Advisory Board.

Proposed law retains present law but changes the board's mission from advisory in nature to an active participant in promulgating of policies, procedures, standards, rules, and regulations necessary to implement the provisions of proposed law and developing an annual list of potential vending locations on state, federal, or other property.

Present law provides for a special fund in the state treasury to be known as the Blind Vendors Trust Fund which shall consist of monies collected from certain vending machines, located on state, federal, and other property pursuant to the Randolph-Sheppard Act. Present law provides that the fund may receive monies from any source, including an appropriations from the legislature. Present law provides that all monies collected by the department shall

go to the state treasurer and shall be credited to the Blind Vendors Trust Fund account under the Louisiana Workforce Commission.

Proposed law changes the Blind Vendors Trust Fund account from being under the La. Workforce Commission to the La. Rehabilitation Services.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 23:3001, 3021, 3022(intro para), 3023(A), (D), and (E), 3032(A), 3041, 3042(5), 3043, 3044(A), (B), and (F)(1) and (2), and 3045; adds R.S. 23:3022(8) and (9), 3023(F), (G), and (H), 3042(8) and (9), and 3044(F)(3); repeals R.S. 23:3031)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill

1. Changes the administrator of the program from the La. Workforce Commission to La. Rehabilitation Services.
2. Defines the criteria for a blind person to qualify for the program.
3. Requires the submission of an annual report.
4. Removes exemption as to the New Orleans Home and Rehabilitation Center or the Villa Feliciana Medical Complex within the Department of Health and Hospitals.
5. Requires La. Rehabilitation Services to promulgate rules and regulations.
6. Requires disputes to be heard before a hearing officer.
7. Provides for definitions.
8. Changes the advisory nature of the Blind Vendors Trust Fund Board.
9. Changes the Blind Vendors Trust Fund account from being under the La. Workforce Commission to the La. Rehabilitation Services.