

HUMAN RESOURCES CODE

CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

Sec. 94.001. DEFINITIONS. In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or indirectly with a facility that is or could be operated by a vocationally handicapped person.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) "Handicapped" means a physical or mental condition that the commission or rehabilitation commission determines to constitute a substantial vocational disadvantage.

(6) "Commission" means the Texas Commission for the Blind.

(7) "Rehabilitation commission" means the Texas Rehabilitation Commission.

Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 21, eff. Sept. 1, 1985.

Sec. 94.002. LICENSE OR PERMIT REQUIRED. (a) No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the commission or is authorized to do so by an agency granted a permit to arrange for vending facilities.

(b) Subsection (a) of this section does not apply to a building in which the State Purchasing and General Services Commission leases space to a private tenant under Subchapter E, Chapter 2165, Government Code.

Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3415, ch. 571, Sec. 5, eff. Jan. 1, 1984; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(16), eff. Sept. 1, 1997.

Sec. 94.003. LICENSING PROCEDURE. (a) On its own initiative or at the request of an agency that controls state property, the commission shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the commission's vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the commission shall either license a blind person to operate a facility to be installed by the commission or allow the rehabilitation commission to install a facility to be operated by a handicapped person who is not blind according to rules and procedures comparable to those adopted by the commission. The commission and the rehabilitation commission may enter into agreements relating to management services and related forms of necessary assistance.

Acts 1979, 66th Leg., p. 2411, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.004. LOCATION OF VENDING FACILITIES. (a) With the concurrence of the agency in charge of state property, the commission shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending facilities. To this end, the agency in charge of constructing new state property shall consult with the commission during the planning stage on the construction.

Acts 1979, 66th Leg., p. 2412, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The commission may issue a license to operate its vending facilities on state property to blind citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the commission shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The commission shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the commission shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees.

Acts 1979, 66th Leg., p. 2412, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.006. EXPIRATION, RENEWAL, AND REVOCATION OF LICENSES. (a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The commission shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The commission and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the commission's rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The commission shall adopt substantive and procedural rules governing the revocation of licenses.

Acts 1979, 66th Leg., p. 2412, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.007. OPERATION OF VENDING FACILITIES UNDER THE REHABILITATION COMMISSION. (a) If the commission determines that a blind person could not properly operate a vending facility at a particular location, the rehabilitation commission may survey the property to determine whether a handicapped person whose disability is not of a visual nature could operate the facility in a proper manner.

(b) The commission and the rehabilitation commission may develop procedures and methods of exchanging information necessary to implement cooperative activities.

(c) The installation and operation of a vending facility by the rehabilitation commission must conform to the provisions of this chapter applicable to vending facilities installed by the commission.

Acts 1979, 66th Leg., p. 2412, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.008. CLOSING CERTAIN FACILITIES PROHIBITED. Neither a vending facility operated by a blind or otherwise vocationally handicapped individual nor a vending facility location surveyed by the commission may be closed as a result of the transfer of state property from one agency to another, the alteration of a state building, or the reorganization of a state agency unless the commission or the rehabilitation commission agrees to the closing.

Acts 1979, 66th Leg., p. 2413, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.009. EMPLOYMENT OF ASSISTANTS. (a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified visually handicapped person must be given preference for employment. If the commission determines that a visually handicapped person could not perform the labor for which an assistant is required, or if a visually handicapped person is not available, a handicapped person whose disability is not of a visual nature must be given preference for employment. If no handicapped person is available for the job, preference must be given to a person who is socially, culturally, economically, or educationally disadvantaged.

(b) An assistant employed by a blind person licensed by the commission must be approved by the commission, and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of his or her license.

Acts 1979, 66th Leg., p. 2413, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979.

Sec. 94.010. COMPETING VENDING MACHINES. (a) If the commission and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a commission-sponsored vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the commission. The commission's authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) Vocationally handicapped individuals who operate vending facilities on state property are entitled to receive all commissions from vending machines installed on the same property. If two or more vending facilities are operated by vocationally handicapped persons in a building in which vending machines are installed, the commission shall divide the commissions from the vending machines among the handicapped operators in a manner that will achieve equity and equality in the incomes of the handicapped operators. If the commission and the rehabilitation commission have decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the assignment of the commissions from vending machines installed in the building.

Acts 1979, 66th Leg., p. 2413, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The commission may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The commission shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the commission.

(c) Except for purchasing and installing original equipment, the operation of commission-sponsored vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the commission shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities.

Acts 1979, 66th Leg., p. 2414, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The commission may promulgate rules and initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the commission's rules and policies.

(c) The agency in charge of state property shall cooperate with the commission and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the installation of the facility, janitorial and garbage disposal services where feasible, and other related assistance.

Acts 1979, 66th Leg., p. 2414, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.013. TRAINING PROGRAMS. The commission may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively.

Acts 1979, 66th Leg., p. 2414, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.014. CONFORMITY WITH FEDERAL STATUTES. (a) This

chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the commission.

(b) If a provision of this chapter conflicts with a federal program requirement, the commission may waive or modify the provision to the extent necessary to secure the full benefits of the federal program.

Acts 1979, 66th Leg., p. 2414, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 94.015. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) property over which the federal government maintains partial or complete control;

(2) property maintained and operated by state-supported institutions of higher education; provided, however, that the commission may enter into agreements with state institutions of higher education concerning the use of blind labor in vending facilities at the institutions; or

(3) property purchased by the state or an agency of the state, property to which title is transferred from one state agency to another, or property control of which is transferred from one state agency to another, if:

(A) at the time of purchase or transfer of title or control, a vending facility is being operated on the property under lease, license, or contract; and

(B) prior to the time of purchase or transfer of title or control, the provisions of this chapter were rendered inapplicable to such property by this section or other law.

(b) This chapter does not apply to vending facilities operated by an institution under the control of the Texas Department of Mental Health and Mental Retardation, or its successor, if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the commission from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons.

Acts 1979, 66th Leg., p. 2414, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4364, ch. 700, art. III, Sec. 2, eff. Aug. 29, 1983.

Sec. 94.016. BUSINESS ENTERPRISES PROGRAM. (a) The commission is authorized to administer the Business Enterprises Program in accordance with the provisions of the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

(b) The commission is authorized to administer a retirement program for individuals licensed to operate vending facilities in accordance with applicable state and federal laws.

(c) A trust fund for a retirement program for individuals licensed to operate vending facilities under the Business Enterprises Program is established with the comptroller of public accounts. This trust fund will be set up in the state treasury.

(d) All federal vending machine income shall be credited to this Business Enterprises Program trust fund. Vending machine income, as defined by 34 C.F.R. Section 395.1(z), means receipts (other than those of a blind vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs) in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(e) All expenditures authorized by the Randolph-Sheppard Act from federal vending revenue funds shall be paid from the Business Enterprises Program trust fund.

(f) The commission may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under

the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, the commission may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

Added by Acts 1999, 76th Leg., ch. 213, Sec. 9, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1011, Sec. 2, eff. June 15, 2001.