WEST VIRGINIA CODE CHAPTER 18 ARTICLE 10G

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§18-10G-1. Policy and purposes; construction of article.

It is hereby declared to be the policy of this state and the purposes of this article to provide blind and severely disabled persons with the maximum opportunities for remunerative employment and for training for such employment; to enlarge the economic opportunities of the blind and severely disabled; and to stimulate them to greater effort in striving to make themselves self-supporting. This article shall be construed so as to most effectively carry out this policy and to accomplish these purposes.

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§18-10G-2. Definitions.

For the purposes of this article:

(a) "Active participation" means an ongoing process of negotiations between the Division of Vocational Rehabilitation and the Committee of Blind Vendors to achieve joint planning of policies, procedures, and standards affecting the overall operation of the Food Services Facilities Program prior to their implementation by the Division of Vocational Rehabilitation. It is understood that the Division of Vocational Rehabilitation bears final responsibility for the administration and operation of the program, including the assurance of active participation by the Committee of Blind Vendors;

(b) "Blind person" means a person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, but is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of not greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or an optometrist, whichever the individual selects;

(c) "Blind vendor" means a blind licensee who is operating a food service facility on federal, state, public, or private property;

(d) "Committee of Blind Vendors" means an officially constituted body functioning in an advisory capacity of the Division of Vocational Rehabilitation's Food Services Facilities Program. This committee is composed of licensed blind vendors, elected biennially and established, constituted, and maintained in accordance with applicable federal regulations;

(e) "Food service facility" means and includes a restaurant, cafeteria, snack bar, vending machine for dispensing foods, beverages, confections, tobacco, or other products for human consumption, and other facilities for selling or providing goods and services for the purposes customarily offered in connection with the operation of any of the foregoing. The term "food service facility" does not include goods and services sold, dispensed from, or provided by the Veterans Administration and the facilities for selling, dispensing, or providing thereof;

(f) "Governmental agency" means and includes the State of West Virginia, each instrumentality and agency thereof, and every county, city, and town within, and every political subdivision within the state, except county boards of education, the Higher Education Policy Commission, the Council for Community and Technical College Education, the Department of Health, the Department of Commerce, the Department of Tourism, and the Department of Corrections;

(g) "Licensee" means all persons licensed under the Division of Vocational Rehabilitation to operate food service facilities under the Randolph/Sheppert Act, Title XX, United States Code 107 *et seq.*;

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(h) "Public office building" means and includes the State Capitol, all county courthouses, all city and town halls, all buildings used primarily for governmental offices of the state, and any county, city, and town within the state, but does not include buildings used for any state institution of higher education, the Department of Health, the Department of Commerce, the Department of Tourism, or the Department of Corrections;

(i) "Vending machine income" means receipts other than those of a blind licensee from the operation of vending machines on public property after deducting the cost of goods sold when machines are operated, serviced, or maintained by, or with the approval of the Division of Vocational Rehabilitation, or commissions paid to other than a licensee by a commercial vending concern which operates, services, or maintains vending machines on public property for or with the approval of the Division of Vocational Rehabilitation; and

(j) "Designee" means an individual or an organization of individuals legally constituted and under the jurisdiction of the Division of Vocational Rehabilitation doing business in the State of West Virginia to assist a state agency with the administration and supervision of the food services facilities program.

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§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

(a) If a governmental agency proposes operating in a public office building a food service facility, whether such operation be of a food service facility in existence on the effective date of this article or be one thereafter to be instituted, the governmental agency, before continuing such existing operation beyond the period of six months immediately following the effective date of this article or before instituting such proposed new operation, shall in writing offer to the division of vocational rehabilitation the opportunity to operate such food service facility in such public office building. If there is a food service facility in operation in a public office building that is being operated by a blind person not covered or supervised as part of the federal or state rehabilitation program prior to the effective date of the amendments to this article, the blind operator shall be permitted to operate the food service facility until the operator ceases to operate or control that food service facility, after which time that food service facility shall become a part of the food service facility program administered by the division of vocational rehabilitation.

(b) If the division of vocational rehabilitation within sixty days from the receipt of the offer mentioned in subsection (a) of this section elects to operate such food service facility as is mentioned in the offer and if the governmental agency by which such offer was made does not, within such sixty-day period, make the determination mentioned in subsection (d) of this section in the manner prescribed in that subsection, the division of vocational rehabilitation, or its designee, may institute and conduct the operation of such proposed food service facility in such public office building without the payment of rent or other compensation for the premises occupied by it in the rendition of such service or for the privilege of conducting such operation.

(c) If the division of vocational rehabilitation under the authority of subsection (b) of this section institutes and operates such food service facility as is mentioned therein, the governmental agency shall not during the course of such operation, operate a food service facility in such public office building or by contract, lease, license, or otherwise, permit any other person, firm, corporation or agency to do so.

(d) If the division of vocational rehabilitation within sixty days from the receipt of the offer mentioned in subsection (a) of this section rejects or fails to accept the offer, or the governmental agency making the offer determines, in good faith and after a full and thorough study of the relevant circumstances, that the division of vocational rehabilitation is unable to operate such proposed food service facility, or that the division of vocational rehabilitation accepted such offer, but, within the period of six months from such acceptance, failed to institute such food service facility, such proposed food service facility may thereupon be provided in such other manner as may be permitted by law, free from the requirements of this article, and the division of vocational rehabilitation may not thereafter, without the express permission of the offering agency, institute such proposed food service facility in the public office building designated in such offer. If the governmental agency

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which made the offer makes the determination of inability of the division of vocational rehabilitation to operate the proposed food service facility, the governmental agency shall, within the aforementioned sixty-day period, provide the division of vocational rehabilitation with a full written statement of the reasons upon which such determination was predicated, and a food service facility may not be operated in such public office building free from the requirements of this article until the written statement mentioned in this subsection is first given.

(e) Notwithstanding any other provisions contained in this article, no governmental agency may by reason of the provisions of this article take any action which will result in the violation of the terms of any valid contract, lease or license existing on the effective date hereof, nor may such governmental agency be precluded from extending the period of such an existing contract, lease or license upon the same terms, and with the same contracting parties, as in the contract, lease or license so extended.

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§18-10G-4. Licenses.

The division of vocational rehabilitation shall issue a license for the operation of a food service facility to any blind person who qualifies for a license in accordance with the criteria which has been established by the division of vocational rehabilitation and the committee of blind vendors. In issuing any license, the division of vocational rehabilitation shall give preference to any blind person who is a resident of the State of West Virginia. Each license issued shall be for an indefinite period but may be terminated by the division of vocational rehabilitation after affording the licensee an appeal in accordance with the applicable rules and procedures, after the division of vocational rehabilitation and the committee of blind vendors are both satisfied that the food service facility is not being operated in accordance with their rules and procedures.

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§18-10G-5. Vending machine income.

(a) If an existing or a new vending machine or a replacement for an existing vending machine is installed after the effective date of the amendments to this article on any public property, vending machine income shall accrue to the licensed blind person operating the food service facility on the same property or, if none, to the division of vocational rehabilitation. The licensed blind person, by contract or otherwise, shall be responsible for servicing and maintaining the vending machine or machines from which vending machine income is received.

(b) Vending machine income which accrues to the division of vocational rehabilitation pursuant to subsection (a) may be used for the following:

(1) Maintenance and replacement of equipment;

(2) Purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum return to vendors; and

(5) Establishing retirement funds, health insurance contributions, paid sick leave and paid vacation time for blind vendors.

(c) If vending machine income which accrues to the division of vocational rehabilitation pursuant to subsection (a) is limited, it may be used to earn federal funds on a matching basis.

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§18-10G-5a. Rehabilitation Services Vending Program Fund created.

There is created in the State Treasury a special revenue fund to be known as the "Rehabilitation Services Vending Program Fund." The fund shall operate as a special revenue fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund consists of moneys deposited in the fund pursuant to the provisions of section five of this article. Money from this fund shall be expended by the Director of the Division of Rehabilitation Services pursuant to the provisions of section five of this article.

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§18-10G-6. Appeals.

(a) Any blind person aggrieved by a decision of the division of vocational rehabilitation under this article may apply for an administrative review or a full evidentiary hearing to be conducted in accordance with the procedures established and approved by the division of vocational rehabilitation and the committee of blind vendors.

(b) The division of vocational rehabilitation or any aggrieved blind vendor may appeal any unfavorable ruling rendered in accordance with this article to the circuit court of Kanawha County or to the circuit court of the county in which the blind vendor resides.

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§18-10G-7. Committee of blind vendors.

(a) The division of vocational rehabilitation shall provide for the establishment and operation, including the payment of all reasonable expenses, of a committee of blind vendors to be elected biennially by the licensed blind vendors. Members of the committee of blind vendors shall be elected by secret ballot and the division of vocational rehabilitation in cooperation with the members of the committee of blind vendors shall adopt rules and regulations pertaining to the election of members and the filling of vacancies that may occur on the committee of blind vendors that will assure every blind vendor an opportunity to cast a secret ballot.

(b) The committee of blind vendors shall actively participate in an advisory capacity in the carrying out of all program management responsibilities assigned to the division of vocational rehabilitation in this article, and the division of vocational rehabilitation shall assure active participation with this committee.

These advisory responsibilities include:

(1) Major administrative decisions in policy and program development decisions affecting the overall administration of the state's food services facilities program;

(2) Receiving and transmitting grievances at the request of blind vendors and serving as an advocate for blind vendors in connection with such grievances;

(3) Development and administration of a state system for the transfer and promotion of blind vendors;

(4) Development of training and retraining programs for blind vendors; and

(5) Sponsorship of meetings and instructional conferences for blind vendors within the state.

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