

83 WisACT 435

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1983 Assembly Bill 401

Date of enactment: May 9, 1984
Date of publication: May 17, 1984

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AN ACT to amend 15.197 (2) and 20.435 (5) (jj); to repeal and recreate chapter 47; and to create 20.435 (5) (h) of the statutes, relating to vocational rehabilitation of handicapped persons, making an appropriation, imposing a penalty, providing for a study and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.197 (2) of the statutes is amended to read:

15.197 (2) COUNCIL ON BLINDNESS. There is created in the department of health and social services a council on blindness consisting of 5 members appointed by the secretary of health and social services for staggered 3-year terms. Persons appointed to the council shall be ~~visually handicapped~~ blind or visually impaired, as defined in s. 47.01 (1) or (5), shall reflect a broad representation of ~~visually handicapped~~ blind or visually impaired persons and shall have a recognized interest in and demonstrated knowledge of the problems of the ~~visually handicapped~~ blind or visually impaired. Council members may be persons receiving services from the department. ~~"Visually handicapped" means having a visual acuity equal to or less than 20/70 in the better eye with correcting lenses, or having a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.~~ The council has the functions specified in s. 47.03 (9).

SECTION 2. 20.435 (5) (h) of the statutes is created to read:

20.435 (5) (h) *Supervised business enterprise program.* All moneys received from the sale of products and services through the supervised business enterprise program under s. 47.03 (4) and the placement of vending machines under s. 47.03 (7), to support the supervised business enterprise program under s. 47.03 (4).

SECTION 3. 20.435 (5) (jj) of the statutes is amended to read:

20.435 (5) (jj) *Workshop for the blind.* The amounts in the schedule for the operation of the workshop for the blind ~~and the operation of business enterprises and home work under ss. 47.01 to 47.10.~~ All moneys received from the sale of products through the workshop for the blind and the ~~business enterprises program~~ sale of labels under s. 47.03 (3) shall be credited to this appropriation.

SECTION 4. Chapter 47 of the statutes is repealed and recreated to read:

CHAPTER 47

VOCATIONAL REHABILITATION;

SPECIALIZED PROGRAMS FOR HANDICAPPED PERSONS

47.01 Definitions. In this chapter:

(1) "Blind" means central visual acuity that does not exceed 20/200 in the better eye with correcting lenses or a visual field that subtends an angle no greater than 20 degrees.

(2) "Employability" means that the provision of vocational rehabilitation services is likely to enable an individual to obtain or retain employment consistent with his or her capacities and abilities in the competitive labor market, the practice of a profession, self-employment, homemaking, farm or family work, sheltered employment, home-based employment or other gainful work.

(3) "Handicapped person" means any person who has a physical or mental disability which constitutes or results in a substantial handicap to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(4) "Severely handicapped person" means any handicapped person who has a severe disability which seriously limits one or more functional capacities, including mobility, communication, self-care, self-direction, work tolerance, or work skills, in terms of employability, whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time and who has one or more physical or mental disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(5) "Visually impaired" means a loss of vision that can reasonably be expected to lead to blindness or a loss of vision that represents a handicap to employment or other major life activities.

(6) "Vocational rehabilitation" means assisting a handicapped person to become capable of competing in the labor market, practicing a profession, being self-employed, raising a family and making a home, participating in sheltered employment or other gainful work.

(7) "Workshop" means a facility whose primary purpose is to provide remunerative employment or vocational rehabilitation services to blind persons, visually impaired persons and severely handicapped persons.

47.02 Vocational rehabilitation. (1) The state agrees to accept the provisions of 29 USC 701 to 796i, the rehabilitation act of 1973 as amended, and the provisions of 34 CFR 300 to 399 to carry out the purposes of the act and to adopt methods of administering the vocational rehabilitation program which will maximize federal participation. The department shall sign agreements with the federal government under 29 USC 701 to 796i to provide vocational rehabilitation services.

(2) This section only applies to handicapped and severely handicapped persons except that each person has a right to be evaluated by the department to determine whether the person is a handicapped person.

(3) The department shall:

(a) 1. Advise and assist any handicapped person who applies to the department concerning his or her rehabilitation.

2. Provide full and prompt consultation with, and preliminary diagnostic study for, each person who applies for vocational rehabilitation services to determine if a vocational rehabilitation plan is feasible.

3. Acquaint each person for whom a vocational rehabilitation program is feasible with the vocational rehabilitation services available under this chapter, counsel the person concerning selection of a suitable vocation, assist the person in identifying vocational needs and provide the services necessary for vocational rehabilitation.

4. Register and keep records for each handicapped person who uses the vocational rehabilitation services provided under this chapter.

(b) Promote the establishment of local resources for the vocational rehabilitation of handicapped persons.

(c) Provide assessment and evaluation services appropriate to each individual, develop an individualized written rehabilitation plan with each handicapped person and develop and supervise services that are part of any handicapped persons's vocational rehabilitation program.

(d) Aid handicapped persons in securing the services needed to make them more employable, place handicapped persons in suitable occupations and provide postemployment services, as defined in the handicapped person's rehabilitation plan developed under par. (c), necessary to maintain employment.

(e) Provide medical or other evaluations at no cost to the applicant to determine the applicant's eligibility for vocational rehabilitation services under this chapter.

(f) Make vocational rehabilitation services under this chapter available in every county to all handicapped persons who are present in the state, regardless of residency.

(g) Report to the federal department of education as required in 29 USC 721 (a) (10).

(h) Provide that severely handicapped persons will receive priority for services under this chapter.

(i) Consider the views of persons who receive vocational rehabilitation services or their parents, guardians or legal custodians and of vocational rehabilitation professionals and providers of vocational rehabilitation services concerning general policy administration of the department's vocational rehabilitation program.

(j) Except as provided in par. (o), determine the financial need of handicapped persons based upon a uniform fee schedule as provided under s. 46.03 (18) for the provision or purchase of vocational rehabilitation services specified in the person's rehabilitation plan developed under par. (c).

(k) Provide vocational rehabilitation services to blind and visually impaired persons, appropriate to each individual.

(L) Maintain current records and statistics on all blind and visually impaired persons in the state concerning vocational rehabilitation, rehabilitation teaching and other departmental services provided and the results achieved in order to plan its services to blind and visually impaired persons.

(m) Maintain a cooperative relationship with counties to assist in administering and providing uniform services to blind and visually impaired persons throughout the state, to prevent duplication of effort and to ensure that blind and visually impaired persons receive adequate services.

(n) Assure that eligibility for vocational rehabilitation services under this chapter is determined without regard to sex, race, age, creed, color, or national origin of the individual applying for services, that no class of individuals is found ineligible solely on the basis of type of disability and that no age limitations for eligibility exist which, by themselves, would result in ineligibility for vocational rehabilitation services.

(o) Assure that no financial needs test is applied as a condition for the provision of counseling, guidance, referral and job placement services. Those services shall be provided at no cost to persons determined eligible for services under this chapter.

(4) The department may:

(a) From the appropriation under s. 20.435 (5) (bm), provide financial aid to any handicapped person who is receiving vocational rehabilitation training and who has no other source of aid.

(b) Accept gifts, grants and donations to be used for the purposes of this chapter. The department shall deposit all moneys received under this paragraph in the appropriation under s. 20.435 (5) (i).

(5) Any person aggrieved by a determination of eligibility or ineligibility for vocational rehabilitation services or by the furnishing or denial of vocational rehabilitation services may commence an appeal as provided in 29 USC 722 (d) or ch. 227, as appropriate.

(6) The department of industry, labor and human relations shall notify the department of health and social services concerning all reports it receives of injuries to employes that may handicap the persons injured.

(7) (a) Except as provided in par. (b), no person may disclose any information concerning any person who applies for or receives vocational rehabilitation services without the consent of the person except when necessary for the administration of this chapter or to carry out a person's rehabilitation plan developed pursuant to this chapter. The department shall promulgate rules to administer this subsection.

(b) 1. Paragraph (a) does not prohibit disclosing information of a summary or statistical nature.

2. Any person who has applied for or received vocational rehabilitation services may obtain access to his or her records under rules promulgated by the department.

(c) Any person who violates this subsection or a rule promulgated under this subsection shall be fined not more than \$500 or imprisoned not more than 6 months or both.

47.03 Specialized programs for handicapped persons. (1) The department shall:

(a) Provide rehabilitation teaching services for persons who are blind or visually impaired including elderly persons and young persons and their parents or guardians, regardless of their eligibility for vocational rehabilitation services. These services may include assessments of each client's service needs, development of an individual service plan, instruction in braille, training in orientation and movement in the person's home or neighborhood, counseling and guidance to increase the blind or visually impaired person's independence, instruction in the use of low-vision aids, personal and home management training and instruction in leisure activities. In conjunction with the provision of these services the department shall:

1. Work with blind and visually impaired persons, in a setting appropriate to each individual, to form rehabilitation plans for independent living to enable them to increase their self-reliance.

2. Assist blind and visually impaired persons in physical orientation and personal adjustment.

(b) Provide for appropriate facilities and necessary utilities to maintain a workshop for blind persons, visually impaired persons and severely handicapped persons. The department shall pay wages to workshop employes that it finds are commensurate with their productive abilities and may furnish to workshop employes materials and tools required for their employment.

(2) The department may accept gifts, grants and donations to be used for the purposes of this section. The department shall deposit all moneys received as gifts, grants and donations in the appropriation under s. 20.435 (5) (i).

(3) (a) No person may advertise any product as being blind-made or sell or distribute any product that is advertised as being blind-made unless at least 75% of the labor involved in creating the product was performed by blind or visually impaired persons. Work involving the preparation, processing, assembling or packing of a product shall be included in calculating the total labor involved in creating the product, while work involving supervision, administration, inspection, shipping or the production of materials from which a finished product is created shall be excluded from the calculation.

(b) The department shall offer to manufacturers and sellers of blind-made products labels which indicate that a product was made by blind persons. The labels shall be sold at a price that defrays the cost of producing or purchasing the labels. All moneys received under this subsection shall be deposited in the appropriation under s. 20.435 (5) (j).

(c) The department shall investigate each complaint concerning a violation of this subsection and shall refer each complaint that it finds justified to the district attorney of the county in which the alleged violation occurred for prosecution.

(d) Any person who violates this subsection shall be fined not more than \$1,000 or imprisoned not more than one year or both.

(4) (a) The department shall establish a supervised business enterprise program for blind persons in which the department owns, leases, manages, supervises, provides consultative services to or operates businesses for the benefit of blind persons, with the ultimate objective of enabling blind persons to operate their own businesses. The department shall offer blind persons first right to operate these businesses.

(b) The department may charge a portion of the expenses of its supervised business enterprise program to each business operating under the program. The department shall establish the procedure for setting these charges by rule, with the participation of a committee of blind vendors established under 20 USC 107b-1.

(c) The department may sell equipment and stock at a fair value, based on condition and serviceability, to any blind person who operates a business under this subsection if all of the following conditions are met:

1. The person can pay for the purchase.
2. The person has received permission from the building manager to use the building in which the business is located.
3. The person has competently operated the business under departmental supervision for at least one year. The department shall define "competently operated" by rule.

(d) If the department sells equipment or stock to a blind person under par. (c), the purchaser shall:

1. Keep the property in good repair and replace worn-out or obsolete equipment.
2. Furnish written reports containing all information the department requires at times specified by the department.
3. Operate the business in accordance with this section and with 20 USC 107 to 107f.

(e) If the department sells equipment or stock to a blind person under par. (c), the bill of sale shall give the department the first right to repurchase the business and its assets if the blind person resells the business or dies. The department's repurchase shall be at a fair value, based on condition and serviceability, but the department may only exercise its right to repurchase within 90 days after it receives notice of the blind person's intention to resell the business or of the blind person's death. The bill of sale shall also require the purchaser to resell the business and its assets to the department at a fair value, based on condition and serviceability, if the purchaser fails to operate the business in accordance with the bill of sale, with this section or with 20 USC 107 to 107f. If the department repurchases a business under this paragraph it shall offer the right to operate the business as provided in par. (a).

(5) The department shall establish and maintain businesses under sub. (4) in state buildings if the department finds that a business would be feasible and profitable.

(6) If no blind person is available to operate a business established under sub. (4), the department may operate the business until a blind operator is available.

(7) If the department decides that a business under sub. (4) would not be feasible and profitable in any state building, the department may contract with vending machine operators to install vending machines in the building, giving preference to blind operators of vending machines. The department shall deposit the proceeds from this subsection in the appropriation under s. 20.435 (5) (h) and shall disburse the proceeds to provide services to blind persons under sub. (4).

(8) A blind person participating in the supervised business enterprise program who is aggrieved by an act or omission of the department may commence a contested case proceeding under ch. 227.

(9) The council on blindness shall make recommendations to the department and to any other state agency concerning procedures, policies, services, activities, programs, investigations and research that affect any problem of blind or visually impaired persons. The department shall consult with the council concerning its programs that affect blind or visually impaired persons; the council may initiate consultations with the department. Upon request the department shall provide information to the council relating to matters concerning blind or visually impaired persons, but only information of a summary or statistical nature.

(10) (a) The department may, on the request of any deaf person, regardless of the person's eligibility to receive services under this chapter, provide funds from the appropriations under s. 20.435 (4) (a) and (jm) to pay part or all of the fees charged by interpreters for the deaf. These payments may only be made if the department finds that the deaf person is financially needy and without any other source of funds.

(b) The department shall grant priority to requests to pay fees charged by interpreters for:

1. Medical, psychiatric, psychological and other counseling services.
2. Legal services and civil court proceedings.
3. Matters concerning law enforcement personnel.
4. Matters concerning any federal, state, county or municipal agency.

(c) The department shall promulgate rules to implement this subsection.

(11) (a) The department shall provide services, including vocational training, craft instruction and a supervised business initiatives program for severely handicapped persons who are eligible for vocational rehabilitation services. Under this subsection, the department may own, lease, manage, supervise or operate businesses for the benefit of severely handicapped persons, including home-based employment and craft work, with the ultimate objective of enabling severely handicapped persons to operate their own businesses. The department shall assist persons who receive these services in marketing the finished products.

(b) The department may charge a portion of the expenses of its supervised business initiatives program to each business operating under the program. The department shall establish by rule the formula for its charges under this paragraph.

(c) Each client who participates in the homecraft program is required to perform at least 20 hours of work per week or produce products whose total value is at least \$20 per week.

(d) The department may not remove any homecraft client who, on July 2, 1983, is participating in the homecraft program unless either of the following occurs:

1. An appropriate alternative placement is found for the client.
2. The department determines that the client is abusing the program.

SECTION 5. Nonstatutory provisions; study of services to the blind. The department of health and social services shall provide for, and assist in conducting, an independent evaluation of the vocational and nonvocational services it contracts for or provides to blind persons. This study shall include: a 5-year summary of information and statistics on the numbers of persons served in comparison to the population of blind persons in the state; the cost of providing such services; the success or rehabilitation rate of the department in providing vocational and rehabilitation teaching services to blind persons; a comparison of the department's services and success rate to services and success rates in other states with similar demographics; the frequency and number of blind persons who

have filed for appeals due to dissatisfaction with department provided or contracted services; the degree of blind client satisfaction with the services received; the adequacy and accessibility of records and information regarding blind persons; an analysis of the special service needs of blind persons not yet eligible for or capable of receiving vocational or rehabilitation teaching services; and the value of establishing a fixed point or points for coordinating services to blind persons within the department. The department shall report its evaluation of services to blind persons and its recommendations regarding the establishment of a fixed point or points for coordination to the governor, the presiding officer of each house of the legislature, the statutory council on blindness, and other interested persons on or before July 1, 1985.

SECTION 6. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.221 (intro.)	47.40	47.02 (6)

SECTION 7. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
16.84 (8)	47.09	47.03 (4), (5), (7) and (11)
20.435 (5)(bm)	ss. 47.05 and 47.40	ch. 47
20.435 (5)(na), as created by 1983 Wis. Act 27	ss. 47.05 and 47.40	ch. 47
36.11 (6)(b)	47.40	47.02
38.30 (1)(b)	47.40	47.02
40.02 (25)(a) 3	47.06	47.03 (1)(b)
46.03 (12)	subch. II of ch. 47	ch. 47
56.01 (6)	47.40	47.01 (3)
