

## Chapter HSS 260

SUPERVISED BUSINESS ENTERPRISES OPERATED BY  
BLIND PERSONS

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**HSS 260.01 Authority and purpose.** This chapter sets forth standards and guidelines for administration by the department of a program of supervised business enterprises operated by blind persons. The department establishes new business enterprises and, as feasible, develops, expands and upgrades existing enterprises which are not providing an adequate income to operators or not providing a level of service meeting customer demand. The chapter is promulgated pursuant to rule-making authority conferred by s. 227.11 (2) (a), Stats., and implements s. 47.03 (4) to (8), Stats., as well as the Randolph-Sheppard Act, as amended, 20 USC 107.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; reprinted to correct error, Register, January, 1984, No. 337; am. Register, April, 1987, No. 376, eff. 5-1-87.

**HSS 260.02 Definitions.** As used in this chapter:

(1) "Active participation" means a formal, ongoing process involving the mutual exchange of information and advice in regard to planning and review of proposed program policies, standards and procedures, with the understanding that only the department has the responsibility to administer the program consistent with applicable statutes, regulations and this chapter, and that the right of the committee to actively participate does not affect that responsibility.

(2) "Blind" has the meaning prescribed in s. 47.01, Stats.

(3) "Business enterprise" means a vending facility or other small for-profit enterprise operated by or to be operated by one or more blind persons supervised by the department.

(4) "Committee" means a committee of operators of supervised business enterprises, the members of which are elected to represent all licensees in the state.

(5) "Competency" means fulfilling the requirements of this chapter.

(6) "Contract" means the agreement between the department and the owner or occupant of the premises where the business enterprise is located.

(7) "Department" means the department of health and social services.

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(8) "Division" means the department's division of vocational rehabilitation.

(9) "Fair value" means the price acceptable to the department and the operator, or, when the 2 parties do not agree, the value as appraised by any person agreed to by both parties, in either case taking into account the condition of the equipment, its remaining useful life, location, installation and removal costs and other relevant factors permitted by law, to arrive at a depreciated price.

(10) "Gross sales" means all revenues received from the operation of the business enterprise, including those assigned to the operators by the department.

(11) "License" means a written document issued by the department to a blind person, authorizing the blind person to operate a business of the type named in the document.

(12) "Licensee" means a person eligible to become the operator of a business enterprise.

(13) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, inservice training and other services provided on a systematic basis to support and improve business enterprises.

(14) "Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine or other income accruing to an operator, after deducting the cost of the sales and other expenses but excluding set-aside charges required to be paid by the operator.

(15) "Operator" means a blind licensee who is operating a supervised business enterprise on federal or other property.

(16) "Operator's agreement" means the document issued by the department that authorizes an operator to conduct business at a specific location.

(17) "Permit" means the agreement with the controlling body or organization of the federal building or other property in which the business enterprise is located.

(18) "Randolph-Sheppard Act" means 20 USC 107.

(19) "Set-aside" means the money collected by the department from operators, based on a percentage of net proceeds, to be used for purposes stated in s. HSS 260.11 (4).

(20) "Vendor-owner" means a business enterprise operator who has exercised the option to purchase the stock and equipment of the business enterprise.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.03 Committee of operators.** (1) There shall be an elected committee of operators to actively participate with the department in the administration of the business enterprise program. The department shall call and conduct elections of committee members. Only operators may nominate candidates and only operators may vote for committee members.  
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bers. All operators shall be given the opportunity to vote for committee members.

(2) The committee shall have not less than 5 members nor more than 9 members, all elected by the operators. Elections shall be held each year. Each member shall serve a term of 2 years, except that at the first election at least 2 members shall be elected for 1 year terms.

(3) The committee shall meet at least 4 times a year to carry out its responsibilities.

(4) The department shall communicate with the committee and receive communications from the committee on matters within the purview of the committee.

(5) Committee responsibilities shall include but are not limited to:

(a) Active participation with the department in its work of making major administrative decisions and policy and program development decisions affecting the overall administration of the business enterprise program;

(b) Receiving and transmitting grievances to the department at the request of blind licensees and serving as an advocate for these licensees in connection with their grievances;

(c) Active participation with the department in the development and administration of a system for transfer and promotion of operators;

(d) Active participation with the department in development of operator training and retraining programs;

(e) Sponsoring, with the assistance of the department, meetings and instructional conferences for operators within the state;

(f) Active participation with the department, on at least an annual basis, in establishing the amount of set-aside funds needed for the coming year and the subsequent charges to arrive at that amount. The department shall maintain adequate records to support the reasonableness of the charges for each purpose for which the funds are spent;

(g) Active participation with the department in updating and making other revisions in the format of the operator's agreement and in this chapter. (See appendix)

(6) The committee may delegate any of its work to subcommittees or individual committee members.

*History:* Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.04 Access by operators to program information.** (1) In accordance with the Randolph-Sheppard Act, each operator under this part shall be permitted access to all program and financial data relevant to the operation of the supervised business enterprise program, including quarterly and annual financial reports, provided that this disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information.

(2) At the request of an operator, department staff shall arrange a convenient time to assist in the interpretation of such financial data.

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(3) If the department cannot provide the requested information in a routine manner, the department may charge for the services involved in obtaining the requested data on an actual cost basis.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.05 Grievances.** Grievances of operators, other licensees and applicants for licenses under this chapter shall be processed in accordance with the following procedure:

(1) Any operator or other affected party dissatisfied with any action or decision of the department may file a written grievance with the committee under s. HSS 260.03(5)(b).

(2) If the aggrieved party is dissatisfied with the outcome of the committee review, the aggrieved party or the committee may forward the written grievance to the division for administrative review by a staff member of the division. The division staff member shall arrange a mutually convenient time and place for the administrative review, and shall notify the grievant of the outcome of the review by certified mail within 10 working days following the review.

(3) If the aggrieved party is dissatisfied with the outcome of the administrative review, the aggrieved party may, within 30 working days after the date of the written notice of the outcome of the review, file a written request for a full evidentiary hearing before a panel appointed by the division administrator consisting of persons knowledgeable about rehabilitation of the blind but who are not staff members of the division. The panel shall make a recommendation to the division administrator who shall notify the grievant of his or her final decision by certified mail within 10 working days after receipt of the panel's recommendation.

(4) If the aggrieved party continues to be dissatisfied with the decision under sub. (3), the individual may, within 30 working days after the date of the notification of the fair hearing outcome, file a complaint with the secretary of the U.S. department of education who will convene an ad hoc arbitration panel to make a final and binding decision on the parties. (See 34 CFR 395.13)

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.06 Licensees.** (1) **ELIGIBILITY.** The following are eligibility requirements for new licensees in the business enterprise program:

(a) The applicant shall be a citizen of the United States.

(b) The applicant shall be blind.

(c) The applicant shall have adequate training to operate the business enterprise efficiently and in accordance with this chapter, as evidenced by successful completion of a training program or equivalent experience, in either case as approved by the department. In offering training opportunities, preference shall be given by the department to persons who need employment.

(d) The applicant shall be otherwise capable of operating the business enterprise, as determined by the department.

(2) **ISSUANCE OF LICENSE.** (a) A license shall be issued by the department for an indefinite period subject to suspension or termination.

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(b) A license is not transferable.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83.

**HSS 260.07 Selection of suitable locations. (1) DETERMINATION.** (a) The department may establish a business at a particular location only if establishment of the enterprise at that location is likely to contribute to the development of significant economic opportunities for the blind and is likely to provide for the most productive use of program assets.

(b) The determination under par. (a) shall be made on the basis of an evaluation of relevant factors disclosed and recorded as the result of a survey of the location. Factors to be evaluated shall include population, traffic, competition, continued availability of the location, type of premises and potential return on investment.

(2) **EFFECT OF LOSS OF SALES.** (a) *Closing or converting the business.* If the business enterprise established under sub. (1) is adversely affected by factors beyond the control of the department or of the operator so that there is at least a 35% decline in sales at that location from one 3-month period to the next or a reduction to zero sales in a shorter period of time, the department may close that business enterprise or convert it to a vending machine operation and may establish a new business enterprise under sub. (1) at a different location. The amount of loss shall be reviewed and verified by the department.

(b) *Transfer following loss of sales.* 1. The operator affected by par. (a) may request transfer to another location, and, subject to par. (c), shall be given preference in the selection process under s. HSS 260.08 when the next 2 program vacancies occur, regardless of income or location of the program vacancies within the state, except that preferential transfer rights shall not apply to seasonal operators.

2. If the operator affected by par. (a) elects not to transfer to one of the next 2 available openings, his or her priority for transfer shall be exhausted and further transfer shall be in accordance with s. HSS 260.08.

(c) *Transfer dependent on satisfactory performance and ability to handle new tasks.* An operator may transfer under this subsection only if his or her past performance is judged satisfactory by the department with the active participation of the committee and with consideration of the views of building management in the affected location, and if the department finds that the operator is able to perform the anticipated new tasks. The new tasks may result from a change in management responsibilities, increased scope of the business, change in number and type of employees or change in overall job duties. If an otherwise competent operator lacks the skills needed in the new enterprise, the department shall help the operator acquire those skills through an appropriate retraining program.

(d) *Probationary period following transfer.* An operator who transfers to a new location under this subsection shall serve a probationary period as described in s. HSS 260.08 (6).

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; r. and recr. Register, April, 1987, No. 376, eff. 5-1-87.

**HSS 260.08 Selection of operators. (1) DEPARTMENT RESPONSIBILITY.** The department shall select operators for business enterprises from among persons licensed to operate business enterprises. The licensee deemed to be best suited for an available business enterprise shall be se-

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lected. The department may appoint a committee of operators and department staff to make a recommendation about the best suited licensee for the available business enterprise.

(2) **NOTIFICATION OF VACANCIES.** The department shall notify all licensees in writing of vacancies in business enterprises throughout the state with instruction for applying to fill the vacancies.

(3) **ORDER OF PREFERENCE.** In selecting an operator for a vacancy, the department shall first consider applicants who are currently operators and thereafter applicants who are licensees but not currently operators, except that preference shall be given to a licensee who was an operator and has requested transfer to a new location in accordance with s. HSS 260.07 (2) (b).

(4) **METHOD OF NOTIFYING A SUCCESSFUL APPLICANT.** The department shall notify the successful applicant in writing by return receipt requested mail of its offer of a vacant operator position to that individual. Within 5 working days after receipt of an offer, the successful applicant shall notify the department in writing by return receipt requested mail that he or she accepts or refuses the offer. Refusal of an offer is final and irrevocable. An applicant who changes his or her mind after accepting an offer and who was an operator at another location at the time of acceptance is not permitted to recover the operator position vacated upon acceptance of the new position unless all affected licensees, the committee and the department agree.

(5) **INVENTORY.** When a new operator takes over a business enterprise, the department and the operator or the operator's representative shall immediately conduct a physical inventory of equipment, accessories and merchandise.

(6) **PROBATIONARY PERIOD.** All operators shall serve a probationary period of 6 months, including operators who have been promoted or transferred. The department may shorten the probationary period to 3 months following an operator's satisfactory management of the business enterprise during that period, or the department may lengthen the probationary period to one year.

History: Cr. Register, May, 1983, No. 329, eff. 6-1-83; am. (1) and (3), renum. (4) and (5) to be (5) and (6), cr. (4), Register, April, 1987, No. 376, eff. 5-1-87.

**HSS 260.09 Setting up the business enterprise.** (1) **EQUIPMENT.** (a) *Department responsibility.* The department shall provide each business enterprise with suitable equipment and shall arrange for all normal repair and replacement of this equipment except for an enterprise which has vendor owned equipment.

(b) *Title to equipment.* 1. Department ownership. All rights, title to and interest in business enterprise equipment, other than equipment owned and maintained by vending machine companies or suppliers, is vested in the department unless the operator exercises the option to purchase the equipment as provided in subd. 2.

2. Vendor ownership. a. All rights, title to and interest in business enterprise equipment may be vested in an operator, as authorized by s. 47.08, Stats., and the Randolph-Sheppard Act, provided that the operator has competently operated the business enterprise under supervision of the department for one year, and if the organization responsible for

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the building in which the business enterprise is located grants permission. The vendor-owner shall remain under supervision of the department.

b. The business enterprise equipment shall be sold at a fair value based on the condition and serviceability of the equipment at the time of sale. Merchandise shall be sold at the original purchase price. Total payment shall be due to the department when the bill of sale is signed.

c. A bill of sale between the operator and the department shall contain the terms and conditions of the sale, in accordance with this chapter and the conditions of any permit or contract governing the premises on which the business enterprise is located. Upon completion of the sale the operator shall be responsible for maintaining, repairing, and replacing all business enterprise equipment, and the set-aside charge for these services is suspended. In the event the operator fails to meet all obligations to provide proper maintenance, repair and replacement of equipment, the department may elect to make the necessary repair or replacement and charge the vendor-owner for such repair or replacement.

d. The department retains a first option to repurchase within 90 days the equipment and stock in the event the vendor-owner dies, ceases to be a licensee, transfers to another business enterprise, or requests in writing purchase by the department. If the option to repurchase is not exercised, the department shall, if requested, provide a written statement to the vendor-owner giving the reasons for not exercising the option.

(c) *Receipt of equipment.* Equipment furnished to the operator or removed by the department from the operator shall be acknowledged by a receipt signed by the operator or his or her agent or by the department's representative, as is appropriate.

(d) *Care of equipment.* Equipment furnished by the department shall be used only for the purpose stated in the operator's agreement. The operator shall exercise reasonable care in the use and maintenance of that equipment in order to keep it in good condition.

(e) *Change or addition of equipment.* The operator shall not add to or change any piece of equipment without prior written approval of the department.

(2) **INITIAL STOCK.** (a) *Department responsibility.* 1. The department shall provide each business enterprise with an adequate initial stock, including merchandise, supplies, and operating capital, as determined by the department to be adequate to begin operation. This level shall be adjusted annually by an index determined by current wholesale prices for such stock.

2. The department shall reimburse the operator if he or she leaves a particular location due to transfer, resignation or dismissal, for any usable and salable stocks and supplies above the current adjusted level. The operator shall reimburse the department if the closing inventory is less than the current adjusted level. In the event of an operator's death,