Chapter 346

2005 EDITION

Programs for Persons Who Are Blind or Deaf

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TRAINING AND EDUCATION FACILITIES

346.010 Training and educational services for children who are deaf or blind. (1) Pursuant to rules of the State Board of Education, the Superintendent of Public Instruction shall provide free training and education services for deaf or blind children, or children who are both deaf and blind, in facilities located in Marion County.

(2) The Superintendent of Public Instruction shall indicate which facilities shall serve as the school for the deaf and the school for the blind. The superintendent may order a change in all or part in the purpose and use of facilities available under this section whenever the superintendent determines that a change in purpose and use will better enable the state to meet its responsibilities for the education and training of deaf or blind children, or children who are both deaf and blind.

(3) The facilities shall be operated primarily for the provision of education and training services for children with sensory disabilities who cannot be efficiently served under the provisions of ORS chapter 343. [Amended by 1965 c.100 §444; 1971 c.301 §2; 1991 c.631 §1]

346.015 Preparing individual education plan prior to placement; consultation; declaration that district cannot provide education; rules. (1) Prior to convening a meeting to prepare an individual education plan for a mentally retarded or developmentally disabled child for whom placement at a school under ORS 346.010 may be considered, the agency that is providing the education for the child shall notify the local community mental health and developmental disabilities program. The mentally retarded and developmentally disabled program mental health case manager in consultation with the Department of Human Services shall evaluate whether the child also has needs for alternative residential care or other support services. If the evaluation determines this to be the case, but documents that community resources are not available to meet these needs, the school district may proceed with the meeting to prepare the individual education plan in which placement at a school under ORS 346.010 may be considered.

(2) An agency providing education under subsection (1) of this section may initiate the procedure in subsection (1) of this section for any child who is not mentally retarded or developmentally disabled when in the agency's judgment a treatment or residential issue is prompting proposed placement under ORS 346.010.

(3) No child shall be placed in a facility operated under ORS 346.010 unless the district superintendent or the superintendent's designee has signed a statement declaring that the district cannot provide a free appropriate public education for the child commensurate with the needs of the child as identified by the individual education plan of the child and that the facility is the least restrictive environment in which the child can be educated.

(4) By rule, the State Board of Education shall determine procedures to be followed by local education agencies in carrying out this section. [1985 c.555 §5; 1989 c.491 §54; 2001 c.36 §2; 2001 c.900 §61]

346.017 Enrollment of nonresident students in facilities permitted. (1) Notwithstanding ORS 346.015, the Superintendent of Public Instruction may enroll a student in the facilities operated under ORS 346.010 if the student is not a resident of Oregon. However, priority for enrollment at the facilities shall be given to students who are residents of Oregon.

(2) The superintendent may charge tuition and fees to any student who is enrolled under this section.

(3) A student who is enrolled under this section shall not be considered a resident of any school district based on the enrollment and attendance at the facility. [1997 c.93 §1]

346.019 Educational Facilities Fund. (1) There is established an Educational Facilities Fund, separate and distinct from the General Fund. All tuition and fees collected under ORS 346.017 and all expenses incurred in the administration of ORS 346.017 shall be deposited to and borne by the fund. Interest earned by the fund shall be credited to the fund.

(2) The moneys in the fund are appropriated continuously to the Superintendent of Public Instruction for purposes of the facilities operated under ORS 346.010. [1997 c.93 §2]

346.020 Course of instruction; admission of students; personnel; authority over students; rules. (1) The Superintendent of Public Instruction shall prescribe the course of instruction for students enrolled in facilities operated under ORS 346.010. The State Board of Education shall determine the procedures for placement, development of services and operation of the schools in conformance with state and federal laws relating to children who are eligible for special education and shall adopt the procedures by rule.

(2) The Superintendent of Public Instruction shall select teachers and other personnel necessary to manage the facilities in an effective and efficient manner. The superintendent shall also designate a well-qualified person or persons to assist in the administration of these facilities. The superintendent shall designate which positions shall serve as supervisors of these educational services and facilities; these designated positions shall be in the unclassified service.

(3) The Superintendent of Public Instruction shall have control over persons enrolled in these facilities and shall direct their care and promote their mental, moral and physical welfare. [Amended by 1965 c.100 §445; 1969 c.597 §80h; 1971 c.301 §3; 1989 c.265 §3; 1991 c.631 §2]

346.030 Application for admission. Application for admission to facilities operated under ORS 346.010 shall be made to the Department of Education. Application shall be made on forms which are provided by the department. [Amended by 1965 c.100 §446; 1969 c.597 §80i; 1971 c.301 §4]

346.035 Annual review of individual education plan for certain children. For children who are enrolled under ORS 346.010 and who are mentally retarded or developmentally disabled, the Department of Education shall notify the community mental health and developmental disabilities program of the date of the annual review of the individual education plan of the child for the purpose of including in the review the assigned case manager's assessment of community resources that are available for treatment or residential needs the child might have. [1985 c.555 §6]

346.040 [Amended by 1965 c.100 §447; 1971 c.301 §5; 1979 c.639 §1; 1981 c.222 §1; repealed by 1991 c.631 §5]

346.041 Resident district responsible for transportation of pupils; Special Education Transportation Revolving Account. (1) Transportation for pupils attending facilities under ORS 346.010 is the responsibility of the pupil's resident school district. The district may provide transportation directly or by agreement with another school district, a public carrier or the Department of Education.

(2) The actual and necessary transportation expenses incurred under subsection (1) of this section, at a frequency consistent with a pupil's individual education plan, shall be considered pupil transportation by the district for purposes of ORS 327.035 (1989 Edition).

(3) The resident school district shall reimburse the Department of Education for all transportation costs the department incurs on behalf of the district within 10 days after receipt of the itemized invoice.

(4) The payments of the resident school districts required under subsection (3) of this section and an amount specifically appropriated thereto shall be deposited in the State Treasury to the credit of the Special Education Transportation Revolving Account to be used by the Department of Education for the transportation of pupils attending facilities under ORS 346.010. The account shall be continuously appropriated for such purpose.

(5) Any unexpended and unobligated balance in the Special Education Transportation Revolving Account in excess of $70,000 as of September 1 of any year shall be transferred from the account to the General Fund to be available for general governmental purposes. [1991 c.631 §3]

346.042 [1979 c.639 §3; repealed by 1991 c.631 §5]

346.045 [1969 c.58 §1; 1971 c.301 §6; 1979 c.639 §2; 1989 c.491 §55; repealed by 1991 c.631 §5]

346.047 Authority of state board to hold property. The State Board of Education may receive, take and hold property, both real and personal for any facility operated under ORS 346.010 and may sell, transfer, assign, allot, set over or convey the property pursuant to legislative authority. [1971 c.301 §9; 1989 c.491 §56]

346.049 [1971 c.301 §10; repealed by 1991 c.631 §5]

346.050 [Amended by 1965 c.100 §448; 1969 c.597 §80j; repealed by 1971 c.301 §26]

346.051 [1971 c.301 §11; 1989 c.491 §57; repealed by 1991 c.631 §5]

346.053 [1971 c.301 §12; repealed by 1991 c.631 §5]

346.055 Trust account for student funds. (1) When the Superintendent of Public Instruction has in possession or under control in a bank account or otherwise, funds that are the property of the students enrolled in facilities operated under ORS 346.010 or that have been deposited for their use or for expenditure in their behalf shall deposit such funds, as they are received, together with any such funds as heretofore have accumulated, with the State Treasurer as a trust account, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account.

(2) The word "funds" as used in this section shall include, but shall not be limited to, moneys deposited with the superintendent for medical care or assistance of students, moneys derived from athletic activities, contributions for athletic, health, or recreation projects, and any other moneys received by the superintendent that are not required by law to be credited to other state funds or accounts.

(3) The Superintendent of Public Instruction or designee is authorized to receive any of the funds referred to in this section. The State Treasurer shall carry such funds in separate accounts for such institutions, but

shall not credit such funds or any part thereof to any state fund for governmental purposes.

(4) Disbursements from the accounts for the purposes for which the contributions or payments were made, and for payment to persons lawfully entitled thereto, may be made by the Superintendent of Public Instruction or designee, by checks or orders drawn upon the State Treasurer. The superintendent shall be accountable for the proper handling of the accounts. [1971 c.301 §13; 1989 c.966 §28]

346.060 [Amended by 1957 c.182 §1; 1959 c.176 §1; 1961 c.484 §1; 1963 c.597 §1; 1965 c.100 §449; 1965 c.469 §1; 1969 c.597 §80k; 1971 c.301 §7; 1971 c.435 §1; repealed by 1973 c.713 §8]

346.070 Aid to students who are deaf; rules. (1) Subject to subsection (3) of this section, every deaf student who has been a resident of Oregon for the three years immediately preceding application and who is attending any university, college or other suitable school is eligible to apply for a state grant-in-aid to help defray approved expenses. If the student's application for a grant-in-aid is approved by the Superintendent of Public Instruction, the Department of Education may make the grant-in-aid contingent upon the student's attending a school of the superintendent's choice.

(2) The grants-in-aid shall not exceed $1,000 to any student for any fiscal year and shall be paid out of any funds appropriated to the department for that purpose. The State Board of Education may adopt rules necessary to carry out this section.

(3) No deaf student shall receive a grant-in-aid under subsection (1) of this section for a period exceeding seven years. [Amended by 1957 c.336 §1; 1959 c.175 §1; 1965 c.100 §450; 1969 c.597 §80L; 1971 c.301 §8; 1977 c.750 §1; 1989 c.491 §58]

346.080 Notice to employees of reasonable assurance of continued employment; effect of failure to give notice. The Department of Education shall give the notice required by ORS 332.554 to all classified employees of the Oregon State School for the Deaf and the Oregon State School for the Blind in the same manner and to the same effect as notice given under ORS 332.554. [1985 c.585 §6; 1991 c.631 §4]

COMMISSION FOR THE BLIND

346.110 Definitions for ORS 346.110 to 346.270. As used in ORS 346.110 to 346.270:

(1) "Commission" means the Commission for the Blind.

(2) "Visually impaired individuals" includes individuals who are blind or have seriously impaired vision or who have conditions which might lead to blindness.

(3) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. [Amended by 1975 c.638 §1; 1989 c.224 §58]

346.120 Commission for the Blind; purpose. There is created a commission for the blind and the prevention of blindness to be known as the Commission for the Blind. The commission shall:

(1) Establish and be responsible for the administration of a program or programs for the blind which will promote, in the manner set forth in ORS 346.110 to 346.270, the welfare of visually impaired individuals including but not limited to cooperation by contract or otherwise with public and private agencies in providing services, programs and facilities for visually impaired individuals.

(2) Be responsible for the fiscal oversight of the commission, which includes but is not limited to:

(a) Regular review of financial statements of the commission;

(b) Participation in the development of the budget for the commission; and

(c) Directing the resources of the commission to implement program goals. [Amended by 1973 c.713 §1; 1975 c.374 §1; 1989 c.224 §59; 2001 c.354 §1]

346.130 Commission members; confirmation; meetings; compensation and expenses. (1) The Commission for the Blind shall be appointed by the Governor and shall consist of seven members:

(a) Four members who are qualified persons within the legal definition of blind persons; and

(b) Three members appointed from among the areas of employers, labor, optometry, ophthalmology, and education of the blind. However, no more than one appointee shall represent the same area during the same term. To the greatest extent possible, appointments from the five areas shall be made on a rotating basis.

(2) The term of office of a member of the commission is two years. Vacancy in the office of a member shall be filled by the Governor for the unexpired term. Any member who is absent from three consecutive commission meetings or more than one-third of the scheduled meetings in one year shall be removed from office and the Governor shall fill the vacancy for the unexpired term. No person may serve on the commission for more than three consecutive terms of one year or more in length.

(3) All appointments of members of the commission by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(4) The commission shall hold meetings at least once every two months and such additional meetings as it may deem necessary.

(5) Each member is entitled to compensation and expenses as provided in ORS 292.495. [Amended by 1957 c.294 §1; 1965 c.100 §451; 1965 c.522 §1; 1969 c.314 §23; 1973 c.792 §10; 1975 c.638 §2; 1977 c.731 §1; 1979 c.411 §1]

346.135 [1977 c.731 §3; 1979 c.411 §2; repealed by 1993 c.742 §80]

346.140 Administrator and other employees. The Commission for the Blind shall employ an administrator and such other persons as may be necessary and fix their compensation, except as such compensation otherwise may be regulated by law. [Amended by 1973 c.713 §2]

346.150 Rules and regulations. (1) The Commission for the Blind may make and promulgate rules and regulations reasonably necessary or proper to carry out the provisions of ORS 346.110 to 346.270.

(2) The commission shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the commission. The use of such records, papers, files and communications by any other agency or department of government or person to which they may be furnished shall be limited to purposes for which they are furnished and by the provisions of law under which they may be furnished. [Subsection (2) enacted as 1971 c.312 §2]

346.160 Register of persons who are blind. The Commission for the Blind shall cause to be compiled and maintained as complete as possible a register of the blind in Oregon, which shall describe the extent of blindness, cause of blindness and such other facts in regard to each person so registered as the commission may deem advisable.

346.165 Use of official records. (1) The Commission for the Blind shall not disclose or use the contents of the register of the blind filed and maintained under the provisions of ORS 346.160, or any records, files, papers or communications for purposes other than those directly connected with the programs administered by the commission, and the register of the blind, the records, files, papers and communications are considered confidential.

(2) Notwithstanding subsection (1) of this section, ORS 346.150 (2) and 346.167, the minutes and records of official actions of the Commission for the Blind, its payroll, books of account and accounts of expenditures are public writings available to inspection in the manner provided in ORS 192.410 to 192.505. [1971 c.312 §§3, 5; 1983 c.740 §113]

346.167 Prohibited uses of records. No person or agency shall solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of programs administered by the Commission for the Blind. [1971 c.312 §4]

346.169 Exchange of certain records between public and private agencies. (1) Notwithstanding the provisions of ORS 346.165 and 346.167, whenever a blind or blind and deaf person requests any public or private agency to exchange with another agency the records of the agency concerning the person making the request, the agency shall furnish the records to the designated agency.

(2) The request made under subsection (1) of this section may be made by a guardian of the blind or blind and deaf person.

(3) As used in this section, "record" includes name and address of the blind or blind and deaf person, medical and psychological records, and other information designated by the person requesting the exchange of records.

(4) Where appropriate, a request for an exchange of records made under the provisions of this section shall be subject to the confidentiality and access provisions of ORS 179.495, 326.565, 326.575, 336.187, 341.290, 344.600, 411.320, 419B.035 and 419B.045. [1975 c.597 §1; 1993 c.546 §103]

Note: 346.169 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 346 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

346.170 Program for conservation and restoration of sight and prevention of blindness; free eye care. (1) The Commission for the Blind shall maintain a program for the conservation and restoration of sight and the prevention of blindness, the objects of which shall be to inaugurate and cooperate in such measures for the prevention of blindness in Oregon as the commission may deem advisable.

(2) The commission in its discretion may arrange for and pay for the examination of the eyes of individual visually handicapped persons and may obtain and pay for medical and surgical treatment and glasses for such persons. [Amended by 1973 c.713 §3; 1975 c.638 §3]

346.180 Vocational rehabilitation services. The Commission for the Blind shall maintain a program of vocational rehabilitation services. The object of the program shall be to aid individuals with visual disabilities in finding employment, to provide such physical restoration as will increase their employability, to establish a program of small business enterprises in which such individuals are able to work, to establish individual programs of college and university instruction, also training in trades and occupations which may be followed in their homes and elsewhere, to cooperate with the United States Government in vocational rehabilitation programs for the blind, including establishment of small business enterprises for them in buildings owned or rented by the federal government and to assist individuals with visual disabilities, in whatever manner may seem advisable to the commission, in disposing of the products of their industries. [Amended by 1975 c.638 §4; 1989 c.224 §60]

346.190 Industries for the Blind Program. (1) The Commission for the Blind shall establish and maintain a program of industries for the blind. For that purpose, it shall equip and operate one or more training centers, one or more workshops and home industry activities for the employment of suitable blind persons, and may devise ways and means for the sale and distribution of the products and services of the Industries for the Blind Program. The commission may conduct such investigation and research as it may deem advisable in selecting new types of industries suitable for visually impaired workers.

(2) The commission shall pay visually impaired workers who have completed their training suitable compensation for their work in the Industries for the Blind Program. The services performed by workers within the Industries for the Blind Program shall be considered services for a nonprofit organization.

(3) The commission may employ such sighted persons as workers in the Industries for the Blind Program as are necessary to operate the program to the extent that such sighted workers do not constitute more than 25 percent of the total workforce of the program. The services performed by such sighted workers shall be considered services for a nonprofit organization.

(4) Except for those persons employed in a supervisory or administrative capacity:

(a) ORS chapter 240 does not apply to workers in the Industries for the Blind Program. However, the commission may allow vacation and sick leave to the employees of the Industries for the Blind Program consistent with the schedules established under the State Personnel Relations Law.

(b) Notwithstanding ORS 238.015, a worker in the Industries for the Blind Program working on July 21, 1973, shall become a member of the Public Employees Retirement System at the beginning of the first full pay period after the worker has completed 12 months′ service uninterrupted by a total of more than 30 working days during the 12 months′ period. This subsection shall not apply nor extend to workers entering the Industries for the Blind Program after July 21, 1973.

(5) As used in this section, "nonprofit organization" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code. [Amended by 1957 c.190 §1; 1967 c.535 §1; 1969 c.240 §2; 1973 c.713 §4; 1979 c.468 §33; 1989 c.224 §61; 2005 c.218 §16]

346.200 [Repealed by 1973 c.713 §8]

346.210 Supplying materials and equipment to persons with visual impairment; ownership. The Commission for the Blind may, whenever it deems proper, aid individual visually impaired persons or groups of such persons by supplying materials, equipment or machinery to them, and also may assist them in the sale and distribution of their products. The ownership of the materials, equipment or machinery supplied to visually impaired persons may be transferred to such persons by the commission. [Amended by 1975 c.638 §5; 1977 c.277 §1; 1989 c.224 §62]

346.220 Preference for products or services of persons with visual impairment in state purchases. Whenever any of the products or services, including operation of vending facilities as defined in ORS 346.510 (2), of visually impaired individuals, produced under the supervision and direction of the Commission for the Blind, meet the requirements of any state department or institution as to quality, quantity and price, such products or services shall have preference and the state departments and institutions shall purchase from the commission such products or services as may be required. [Amended by 1975 c.638 §6; 1989 c.224 §63]

346.230 Commission accounts; funds; appropriations; sales on credit. (1) The Commission for the Blind shall keep separate books of accounts for its industries. All negotiable funds received by the commission from the sale of any products made at its workshops, or from the sale of products made under its supervision to which it has title, shall be paid into the State Treasury and by that office kept separate and apart from other funds. Funds so paid in shall be paid out only on warrants of the Oregon Depart-

ment of Administrative Services, based on duly verified vouchers, as other claims are paid, for the support and maintenance of the industries, the payment of workers in such industries, the purchase of real estate, the planning, construction and remodeling of buildings for workshops and the carrying on of the work of the commission. The sums of money so paid in are continuously appropriated to the commission for the purposes stated.

(2) Subject to any other applicable law regulating the sale of goods on credit, the commission may sell products on credit as well as for cash. [Amended by 1959 c.98 §1; 1961 c.484 §2; 1983 c.740 §114; 2005 c.755 §23]

346.235 [1959 c.98 §3; repealed by 1965 c.448 §4]

346.240 Payment of incidental expenses of commission. The Oregon Department of Administrative Services may, from time to time, as may be necessary, draw a warrant in favor of the Commission for the Blind for a sum not exceeding $1,500 in any one amount, but not in any event in excess of the amount paid into the State Treasury under ORS 346.230, to be used for the purpose of paying for postage, expressage, freight, telegraph, telephone and other incidental expenses for which payment must be made in cash. The commission shall file with the Oregon Department of Administrative Services, from time to time, vouchers therefor. Before the commission shall receive any moneys to be expended for incidental expenses, the commission shall designate the person to whom the funds shall be paid. [Amended by 1973 c.713 §5; 1983 c.740 §115]

346.250 Program of social and educational services. The Commission for the Blind may establish a program of social and educational services for the purpose of ameliorating the condition of visually impaired individuals by providing instruction which will assist them in making the best possible adjustment to conditions resulting from loss or impairment of sight, as the commission may deem advisable. Special courses of instruction and training may be established at training centers and workshops for visually impaired individuals which shall include home economics, household mechanics, orientation to better living and such other instruction as will contribute to the economic and social adjustment of visually impaired individuals. Sighted persons with whom visually impaired individuals are living may, whenever the commission deems necessary, be given instruction that will assist them in caring for such visually impaired individuals. The commission through this program also shall cooperate with the Library of Congress and other agencies in the distribution of talking-book machines, sound-reproducing equipment and other devices designed for the use of the blind, and from time to time may cause to be made and distributed to visually impaired individuals in this state specially recorded subjects and Braille publications. [Amended by 1973 c.713 §6; 1989 c.224 §64]

346.260 Cooperation with Department of Human Services. The Commission for the Blind shall:

(1) Cooperate with the Department of Human Services in the administration of programs for the blind; and

(2) When requested by the department, make an investigation of an applicant eligible for programs for the blind and make recommendations to the department regarding services for the applicant and the employability of the applicant. [Amended by 2001 c.355 §1]

346.265 Authority to cooperate with and receive grants from federal government. In addition to its other powers, the Commission for the Blind may enter into agreements with, join with or accept grants from, the federal government for cooperative research, demonstration projects and personnel training programs. The commission is designated the state agency to receive any other federal funds available for the furtherance of the programs under the administration of the commission. [1961 c.484 §5]

346.270 Receipt and expenditure of gifts and bequests. The Commission for the Blind may receive moneys by gift or bequest and expend the moneys for any of the objects and purposes of the commission under ORS 346.120. Moneys received under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. [Amended by 1965 c.100 §452; 1975 c.605 §18; 1989 c.966 §29]

346.280 [Repealed by 1975 c.605 §33]

346.290 Commission for the Blind Account. (1) There is established in the General Fund of the State Treasury an account to be known as the Commission for the Blind Account. Except for Industries for the Blind Program funds designated in ORS 346.230 and funds made available to the commission under ORS 346.270 or deposited pursuant to ORS 346.540, all moneys received by the commission for promoting the welfare of visually impaired individuals shall be paid into the State Treasury and credited to the Commission for the Blind Account. All moneys in the Commission for the Blind Account hereby are appropriated continuously for and shall be used by the commission for the respective purposes authorized by law.

(2) The Commission for the Blind shall keep a record of all moneys deposited in the Commission for the Blind Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1963 c.381 §3; 1973 c.713 §7; 1975 c.471 §2; 1981 c.271 §1; 1989 c.224 §65]

346.310 [Repealed by 1973 c.713 §8]

346.320 [Amended by 1961 c.484 §3; repealed by 1973 c.713 §8]

346.330 [Repealed by 1957 c.190 §2]

346.340 [Repealed by 1973 c.713 §8]

346.350 [Repealed by 1955 c.112 §1]

346.360 [Amended by 1967 c.335 §40; repealed by 1973 c.713 §8]

346.370 [Repealed by 1957 c.190 §2]

346.380 [Repealed by 1957 c.190 §2]

346.390 [Repealed by 1957 c.190 §2]

VENDING FACILITIES ON PUBLIC PROPERTY

346.510 Definitions for ORS 346.510 to 346.570. As used in ORS 346.510 to 346.570, the term:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. Such blindness shall be certified by a licensed physician who specializes in diseases of the eye.

(2) "Vending facility" means:

(a) Such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary or customarily used for the vending of such articles as may be approved by the Commission for the Blind and the agency having care, custody and control of the building or property in or on which the vending facility is located;

(b) Manual or coin operated vending machines or similar devices for vending such articles; or

(c) Cafeterias or snack bars for the dispensing of food stuffs and beverages.

(3) "Operator" means the individual blind person responsible for the day to day conduct of the vending facility operation.

(4) "Public building" or "property" means any building, land or other real property, owned, leased or occupied by any department or agency of the State of Oregon or any of its political subdivisions except public elementary and secondary schools. [1957 c.295 §2; 1975 c.638 §7]

346.520 Persons who are blind to operate vending facilities in public buildings or on public property; charges prohibited; exception. (1) For the purposes of providing blind persons with remunerative employment, enlarging the economic opportunities of blind persons and stimulating blind persons to greater efforts to make themselves self-supporting with independent livelihoods, blind persons licensed under the provisions of ORS 346.510 to 346.570 by the Commission for the Blind, as set forth in ORS 346.510 to 346.570, shall operate vending facilities in or on any public buildings or properties where, in the discretion of the head of the department or agency in charge of the maintenance of such buildings or properties, such vending facilities may properly and satisfactorily operate.

(2) Notwithstanding ORS 276.385, the department or agency in charge of the maintenance of a public building or property in or on which a vending facility is operated under ORS 346.510 to 346.570 shall not charge the Commission for the Blind or blind persons licensed under the provisions of ORS 346.510 to 346.570 any amount for:

(a) Rental of the space in or on which the vending facility is operated; or

(b) Utility costs incurred in the operation of the vending facility.

(3) Subsection (2) of this section does not apply to charges imposed by the Department of Transportation. Subject to the availability of funds, the department may refrain from charging any amount for rental of space or utility costs described in subsection (2) of this section. [1957 c.295 §1; 1975 c.638 §8; 2003 c.268 §1]

346.530 Notice to commission on vending facilities locations; statement of reason for refusal of commission offer. (1) Each head of the department or agency in charge of the maintenance of public buildings or properties shall:

(a) Periodically notify the Commission for the Blind in writing of any and all existing locations where vending facilities are in operation or where vending facilities might properly and satisfactorily be operated.

(b) Not less than 30 days prior to the reactivation, leasing, re-leasing, licensing or issuance of permit for operation of any vending facility, inform the Commission for the Blind of such contemplated action.

(c) Inform the Commission for the Blind of any locations where such vending facilities are planned or might properly and satisfactorily be operated in or about other public buildings or properties as may now or thereafter come under the jurisdiction of the department or agency for maintenance, such

information to be given not less than 30 days prior to leasing, re-leasing, licensing or issuance of permit for operation of any vending facility in such public building or on such property.

(2) If the Commission for the Blind makes an offer to operate a vending facility under the provisions of this section and the offer is not accepted for reasons other than the decision to have no vending facility on the premises, such head of the department or agency shall notify the commission in writing of the reasons for refusing its offer, including but not limited to the terms and conditions of the offer which was accepted, if any.

(3) Any contract or agreement entered into subsequent to July 1, 1975, which is not in compliance with or in violation of ORS 346.220 and 346.510 to 346.570, shall be null and void. [1957 c.295 §3; 1965 c.471 §1; 1975 c.638 §9]

346.540 Duties of commission with respect to operation of vending facilities; rules. (1) The Commission for the Blind shall:

(a) Make surveys of public buildings or properties to determine their suitability as locations for vending facilities to be operated by blind persons and advise the heads of departments or agencies charged with the maintenance of such buildings or properties as to their findings.

(b) With the consent of the head of the department or agency charged with the maintenance of the buildings or properties, establish vending facilities in those locations which the Commission for the Blind has determined to be suitable, and may enter into leases or licensing agreements therefor.

(c) Select, train, license and install qualified blind persons as managers of such vending facilities.

(d) Adopt rules as it may from time to time deem necessary to assure the proper and satisfactory operation of such vending facilities, and for the benefit of vending facility operators.

(e) Provide for the continued operation of established vending facilities if a qualified blind person is not available until a qualified blind person is available for assignment as manager.

(2) If the head of the department or agency charged with the maintenance of buildings or properties does not consent to the establishment of vending facilities in locations in the building or on the property which were determined suitable by the commission, that person shall inform the commission in writing of the reasons why consent is not given.

(3) The commission may establish in the State Treasury a fund from the net proceeds of the operation of vending facilities. Moneys so deposited including the interest thereon shall be credited by the State Treasurer to a special checking account, separate and distinct from the General Fund. Disbursement may be made by check signed by the person designated by the commission. The fund shall be used for the purposes of and are continuously appropriated for maintenance and replacement of equipment, management services, assuring a fair minimum of return to vendors, or for such other purposes necessary and proper for the benefit of operators of vending facilities. Interest earned by the account shall be credited to the account. [1957 c.295 §4; 1965 c.471 §2; 1975 c.638 §10; 1981 c.271 §2; 1989 c.966 §30]

346.550 Commodities and articles that may be sold at vending facilities. A vending facility operated under the provisions of ORS 346.510 to 346.570 shall be used solely for the vending of such commodities and articles as may be approved by the Commission for the Blind and by the head of the department or agency in charge of the maintenance of the building or property in or on which such facility is operated. [1957 c.295 §5; 1975 c.638 §11]

346.560 Operator subject to applicable laws and ordinances. The operator of each vending facility operated under the provisions of ORS 346.510 to 346.570 shall be subject to the provisions of any and all laws and ordinances applying within the territory within which such facility is located including those requiring a license or permit for the conduct of such business or any particular aspect thereof. [1957 c.295 §6; 1975 c.638 §12]

346.565 Participation in state health benefit plan and deferred compensation plan. (1) A blind business enterprise manager, as described under ORS 346.510 to 346.570, or a blind employee of a private nonprofit Oregon corporation established and authorized by the Commission for the Blind to provide employment to the blind may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the manager or the blind employee.

(2) A blind business enterprise manager, as described under ORS 346.510 to 346.570, may participate in state deferred compensation plan established under ORS 243.401 to 243.507, contingent on participation not affecting the tax exempt status of other contributions to the deferred compensation plan.

(3) For the purposes of subsections (1) and (2) of this section, such managers and employees shall be considered eligible state

employees. [1991 c.577 §2; 1997 c.179 §28; 1997 c.222 §51]

346.570 Rights of persons operating vending facilities prior to August 20, 1957. (1) Those individuals who are operating vending facilities in public buildings or on public properties, as defined in ORS 346.510 prior to August 20, 1957, shall not be affected by ORS 346.510 to 346.570, except and only insofar as provided in ORS 346.530 (2).

(2) Any blind person who is presently operating a vending facility in or on public buildings or properties who desires to make use of the advantages of the program authorized by ORS 346.510 to 346.570 shall have the right to do so; and, in such instance, the Commission for the Blind may negotiate and consummate arrangements for the purchase of such vending facility equipment as it may deem necessary for the satisfactory operation of the vending facility. [1957 c.295 §7; 1975 c.638 §13; 1987 c.158 §61]

ASSISTANCE DOGS FOR PERSONS WHO ARE BLIND OR DEAF

346.610 Definitions for ORS 346.610 to 346.630. As used in ORS 346.610 to 346.630:

(1) "Blind person" means a person who has vision of 20/200 or less with the best correction or has a visual field of 20 degrees or less.

(2) "Dog guide" means a dog that is wearing a dog guide harness and is trained to lead or guide a blind person.

(3) "Dog guide trainee" means a dog undergoing training to lead or guide a blind person.

(4) "Trainer" means a person who trains dogs to lead or guide blind persons.

(5) "Mode of transportation" means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(6) "Public accommodation" means a place of public accommodation as defined in ORS 659A.400. [1967 c.259 §1; 1971 c.87 §1; 1973 c.714 §12; 1981 c.771 §1]

346.620 Dog guide in place of public accommodation or on public transportation for person who is blind; liability. (1) A blind person shall have the right to have a dog guide with the blind person, and a trainer shall have the right to have a dog guide or dog guide trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the blind person or trainer controls the behavior of the dog.

(2) No blind person or trainer shall be required to pay an additional fee or admission charge for the dog guide.

(3) A blind person or trainer is liable for any damages done to a place of public accommodations or to any mode of transportation by the dog guide. [1967 c.259 §2; 1971 c.87 §2; part renumbered 346.991]

346.630 Prohibition against discriminating in renting housing because of dog guide; remedy. (1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a blind person on the basis of the person's use or possession of a dog guide.

(2) A blind person shall have a cause of action to recover compensatory damages or $200, whichever is greater, from any landlord, as defined in ORS 90.100, who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person's use or possession of a dog guide. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(3) No blind person shall be required to pay an additional nonrefundable fee or an excessive deposit for the dog guide.

(4) A blind person is liable for any damages done to the dwelling unit by the dog guide. [1975 c.256 §8; 1981 c.179 §1; 1993 c.369 §35; 1995 c.618 §67]

346.640 Definitions for ORS 346.640 to 346.660. As used in ORS 346.640 to 346.660:

(1) "Deaf person" means a person whose hearing disability precludes successful processing of linguistic information through audition with or without a hearing aid.

(2) "Hearing ear dog" means a dog that is on an orange leash and that is trained to assist a deaf person.

(3) "Hearing ear dog trainee" means a dog undergoing training to assist a deaf person.

(4) "Mode of transportation" means any mode of public transportation operating within this state except for parlor, lounge, or club car of a common carrier by railroad.

(5) "Public accommodation" means a place of public accommodation as defined in ORS 659A.400. [1981 c.771 §3]

346.650 Hearing ear dog in place of public accommodation or on public transportation for person who is deaf; liability. (1) A deaf person shall have the right to have a hearing ear dog with the person, and a trainer of a hearing ear dog shall have the right to have the hearing ear dog or hearing ear dog trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the deaf person or trainer controls the behavior of the dog.

(2) No deaf person or trainer of a hearing ear dog shall be required to pay an additional

fee or admission charge for the hearing ear dog.

(3) A deaf person or trainer of a hearing ear dog is liable for any damages done to a place of public accommodations or to any mode of transportation by the hearing ear dog. [1981 c.771 §4]

346.660 Prohibition against discriminating in renting housing because of hearing ear dog; liability. (1) A landlord, as defined in ORS 90.100, may not refuse to rent a dwelling unit, as defined in ORS 90.100, to a deaf person on the basis of the use or possession of a hearing ear dog.

(2) No deaf person shall be required to pay an additional nonrefundable fee for the hearing ear dog.

(3) A deaf person is liable for any damages done to the dwelling unit by the hearing ear dog. [1981 c.771 §5; 1993 c.369 §36]

ASSISTANCE ANIMALS FOR PERSONS WITH PHYSICAL IMPAIRMENT

346.680 Definitions for ORS 346.680 to 346.690. As used in ORS 346.680 to 346.690:

(1) "Assistance animal" means any animal trained to assist a physically impaired person in one or more daily life activities, including but not limited to:

(a) Dog guides, as defined in ORS 346.610;

(b) Hearing ear dogs, as defined in ORS 346.640;

(c) An animal trained to pull a wheelchair;

(d) An animal trained to fetch dropped items; and

(e) An animal trained to perform balance work.

(2) "Assistance animal trainee" means any animal undergoing training to assist a physically impaired person.

(3) "Daily life activity" includes but is not limited to:

(a) Self-care;

(b) Ambulation;

(c) Communication; or

(d) Transportation.

(4) "Mode of transportation" means any mode of transportation operating within this state.

(5) "Physically impaired person" means any person who is permanently physically impaired, whose physical impairment limits one or more of daily life activities and who has a record of impairment and is regarded by health care practitioners as having such an impairment, requiring the use of an assistance animal including but not limited to blindness, deafness and complete or partial paralysis.

(6) "Public accommodation" means a place of public accommodation as defined in ORS 659A.400 including but not limited to educational institutions, airlines and restaurants. The exception stated in ORS 659A.400 (2) is not an exception under ORS 90.390 and 346.680 to 346.690. [1989 c.336 §1; 1993 c.369 §37; 1995 c.79 §189]

346.685 Rights of person with physical impairment and trainer; prohibition on admission charge for animal; access to transportation; liability for damage by animal. (1) A physically impaired person has the right to have an assistance animal with the physically impaired person, and a trainer has the right to have an assistance animal or assistance animal trainee with the trainer, in any place of public accommodation or on any mode of transportation so long as the physically impaired person or trainer controls the behavior of the animal.

(2) No physically impaired person or trainer shall be required to pay an additional fee or admission charge for the assistance animal.

(3) The assistance animal shall be allowed to accompany its owner in an ambulance or other mode of transport in the event of a medical emergency. If the owner is unconscious, the assistance animal shall be placed in an emergency veterinary clinic until the person regains consciousness and can make arrangements for the animal, or a relative responsible for the injured person is contacted and can make arrangements for the animal, or until the injured person dies, in which case the authorities will attempt to contact the school, where the animal was trained, for further action.

(4) A physically impaired person or trainer is liable for any damages done to a place of public accommodations or to any mode of transportation by the assistance animal. [1989 c.336 §2]

346.687 Damages recoverable for harm or theft of assistance animal. (1) In addition to and not in lieu of any other penalty provided by state law, a physically impaired person who uses an assistance animal or the owner of an assistance animal may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the assistance animal. The physically impaired person or owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks an assistance animal. The action authorized by this subsection may be brought by the physically impaired person or owner even if the assistance animal was in the custody or under the

supervision of another person when the theft or attack occurred.

(2) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as an assistance animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained assistance animal, without any differentiation for the age or the experience of the animal. In addition, the physically impaired person or owner may recover any other costs and expenses, including, but not limited to, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, incurred as a result of the theft of or injury to the animal.

(3) If the theft of or unprovoked attack on an assistance animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen but is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the veterinary medical expenses, costs of temporary replacement assistance services, whether provided by another assistance animal or a person, and any other costs and expenses incurred by the physically impaired person or owner as a result of the theft of or injury to the animal.

(4) No cause of action arises under this section if the physically impaired person, owner or the person having custody or supervision of the assistance animal was committing a criminal or civil trespass at the time of the theft of or attack on the assistance animal.

(5) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court. [1993 c.312 §2; 1995 c.618 §68]

346.690 Prohibition against discrimination in renting housing because of assistance animal; liability. (1) A landlord, as defined in ORS 90.100, shall not refuse to rent a dwelling unit, as defined in ORS 90.100, to a physically impaired person on the basis of the person's use or possession of an assistance animal.

(2) A physically impaired person shall have a cause of action to recover compensatory damages or $200, whichever is greater, from any landlord who refuses to rent a dwelling unit, or who charges additional rent, on the basis of the person's use or possession of an assistance animal. The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court.

(3) No physically impaired person shall be required to pay an additional nonrefundable fee or an excessive deposit for the assistance animal.

(4) A physically impaired person is liable for any damages done to the dwelling unit by the assistance animal. [1989 c.336 §3; 1995 c.618 §69]

PENALTIES

346.990 [Repealed by 1965 c.100 §456]

346.991 Penalties. (1) Violation of ORS 346.167 is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 60 days, or both.

(2) Violation of ORS 346.620 (1) or (2) is a Class C misdemeanor.

(3) Violation of ORS 346.650 or 346.660 is a Class C misdemeanor.

(4) Violations of ORS 346.680 to 346.690 are subject to the penalties provided in subsections (1) to (3) of this section. [Subsection (1) enacted as 1971 c.312 §6; subsection (2) derived from 346.620; 1981 c.771 §2; subsection (3) enacted as 1981 c.771 §6; subsection (4) enacted as 1989 c.336 §5; 1993 c.369 §38; 2003 c.378 §33]

CHAPTER 347

[Reserved for expansion]