

CHAPTER 717

AN ACT

HB 3253

Relating to persons who are blind; creating new provisions; amending ORS 293.701, 346.290, 346.510, 346.520, 346.530, 346.540, 346.550 and 346.560; repealing ORS 346.210 and 346.220; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 8 of this 2017 Act are added to and made a part of ORS 346.510 to 346.570.

SECTION 2. (1) The Commission for the Blind shall establish in the State Treasury a fund from the net proceeds of the operation of vending facilities. Moneys deposited into the fund, including the interest earned, shall be credited to a special checking account, separate and distinct from the General Fund. Disbursement from the account may be made by check signed by the person designated by the commission. Interest earned by the account shall be credited to the account.

(2) Moneys in the fund shall be used for the purposes of, and are continuously appropriated to the commission for:

- (a) Maintaining and replacing equipment;
- (b) Purchasing new equipment;
- (c) Management services, including but not limited to management training services;
- (d) Ensuring a fair minimum of return to vending facility managers; and
- (e) Retirement or pension funds, health insurance contributions and, if determined by a vote of vending facility managers, paid sick leave and vacation time.

(3) The commission shall provide to the Governor and to vending facility managers quarterly reports of the account established under this section.

SECTION 3. (1) The Commission for the Blind shall collect a percentage of net proceeds earned by a vending facility. The moneys collected under this section shall be deposited into the fund established under section 2 of this 2017 Act.

(2) The commission shall determine by rule the standard percentage of net proceeds to be collected under this section. The commission shall provide in an agreement with a vending facility manager the percentage of net proceeds that the commission will collect from the vending facility manager under this section. The commission shall reduce, but not below a percentage determined by the commission by rule, the percentage collected by the following amounts:

(a)(A) Four percentage points if the vending facility offers exclusively healthy vending items or local vending items;

(B) Three percentage points if at least 75 percent but less than 100 percent of the offerings at the vending facility are healthy vending items or local vending items; or

(C) Two percentage points if at least 50 percent but less than 75 percent of the offerings at the vending facility are healthy vending items or local vending items;

(b) Two percentage points if the vending facility employs at least one person who is blind, in addition to the vending facility manager;

(c) One percentage point for each person who is blind and is employed by the vending facility in addition to the persons described in paragraph (b) of this subsection;

(d) One percentage point if the vending facility employs at least one person with a disability, as defined in ORS 174.107, or who is a veteran, as defined in ORS 408.225, in addition to the vending facility manager; and

(e) One-half of one percentage point for each person with a disability or veteran employed by the vending facility in addition to the persons described in paragraph (d) of this subsection.

SECTION 4. Section 3 of this 2017 Act is amended to read:

Sec. 3. (1) The Commission for the Blind shall collect a percentage of net proceeds earned by a vending facility. The moneys collected under this section shall be deposited into the fund established under section 2 of this 2017 Act.

(2) The commission shall determine by rule, and shall state in an agreement with a vending facility manager, the [standard] percentage of net proceeds to be collected under this section. [The commission shall provide in an agreement with a vending facility manager the percentage of net proceeds that the commission will collect from the vending facility manager under this section. The commission shall reduce, but not below a percentage determined by the commission by rule, the percentage collected by the following amounts:]

[(a)(A) Four percentage points if the vending facility offers exclusively healthy vending items or local vending items;]

[(B) Three percentage points if at least 75 percent but less than 100 percent of the offerings at the vending facility are healthy vending items or local vending items; or]

[(C) Two percentage points if at least 50 percent but less than 75 percent of the offerings at the vending facility are healthy vending items or local vending items;]

[(b) Two percentage points if the vending facility employs at least one person who is blind, in addition to the vending facility manager;]

[(c) One percentage point for each person who is blind and is employed by the vending facility in ad-

dition to the persons described in paragraph (b) of this subsection;]

[(d) One percentage point if the vending facility employs at least one person with a disability, as defined in ORS 174.107, or who is a veteran, as defined in ORS 408.225, in addition to the vending facility manager; and]

[(e) One-half of one percentage point for each person with a disability or veteran employed by the vending facility in addition to the persons described in paragraph (d) of this subsection.]

SECTION 5. (1) The Commission for the Blind shall adopt by rule a vending facility manager statement of full-time employment with which a vending facility manager shall comply. The statement must describe the responsibilities of a vending facility manager, including, but not limited to, responsibilities regarding:

(a) Weekly contact requirements with employees or subcontractors of the manager;

(b) Vending facility inspections; and

(c) The development and maintenance of work logs.

(2) The commission shall include the active participation, as described in section 8 of this 2017 Act, of the commission's business enterprise consumer committee, in developing the statement described in this section.

SECTION 6. (1) With written approval from the Commission for the Blind, a vending facility manager may enter into an agreement with a subcontractor included on the list of approved subcontractors described in subsection (4) of this section in order to enable the manager to operate the vending facility.

(2) In determining whether to approve an agreement with a subcontractor, the commission shall consider:

(a) The quality of service that the vending facility manager and subcontractor are able to provide; and

(b) Any product storage requirements.

(3) The commission may provide in an agreement with a vending facility manager that the commission may increase the percentage of net proceeds collected under section 3 of this 2017 Act from a vending facility manager who enters into an agreement with a subcontractor under this section.

(4)(a) The commission shall establish a list of approved subcontractors with which a vending facility manager may enter into an agreement.

(b) The business enterprise consumer committee shall actively participate in developing the criteria for approval of subcontractors.

(c) The commission shall consult with the Department of Administrative Services in establishing the list.

(d) The commission may, through a procurement process with the department, revise the list as necessary.

(e) The commission may, in approving subcontractors, give preference to subcontractors that provide healthy vending items or local vending items and that employ persons with disabilities, as defined in ORS 174.107, and veterans, as defined in ORS 408.225.

(f) An agreement with an approved subcontractor is subject to ORS chapter 279A and ORS chapter 279B.

(5) The commission may determine by rule the services or products that a subcontractor may provide and the extent to which a subcontractor may perform the duties of a vending facility manager, consistent with the vending facility manager statement of full-time employment described in section 5 of this 2017 Act.

(6)(a) A vending facility manager who enters into an agreement with a subcontractor under this section is solely responsible for fulfilling the requirements of the vending facility manager statement described in section 5 of this 2017 Act and for meeting any obligations arising from agreements into which the vending facility manager has entered for the purpose of managing the vending facility. Unless the commission gives written approval, an agreement between a vending facility manager and a subcontractor may not include any provision that imposes liability on the commission or that obligates the commission to the subcontractor.

(b) The commission may not be held liable for claims of any nature, including claims for injunctive or declaratory relief, that arise out of any agreement or subcontract between a vending facility manager and a subcontractor.

(7) The commission, with the active participation of the business enterprise consumer committee, may adopt rules relating to the assignment of a vending facility manager to manage a vending facility.

SECTION 7. The surviving spouse or domestic partner of a vending facility manager who is deceased or who becomes incapacitated by a physical or mental illness may continue to operate the vending facility formerly operated by the original vending facility manager for up to six months after the date of death or incapacitation, or until the date on which the operating agreement expires, whichever is sooner, for the purpose of winding down the operations of the vending facility.

SECTION 8. (1) The Commission for the Blind shall ensure the active participation of the commission's business enterprise consumer committee in the commission's major administrative, policy and program development decisions that impact the commission's business enterprise program.

(2) The commission shall provide relevant data and information to the committee in a timely manner in order to effectuate the committee's active participation.

(3) The commission has final authority and responsibility for the administration and operation of the business enterprise program.

(4) If the commission does not follow a recommendation of the committee regarding a matter on which the committee actively participates, the commission shall provide to the committee a written explanation as to the reason the committee's recommendation was not followed.

SECTION 9. (1) The Commission for the Blind may, in the discretion of the commission or if requested by a vending facility manager licensed under ORS 346.510 to 346.570, aid persons with visual impairments by supplying to a person with a visual impairment materials, equipment or machinery, or by allowing the manager to subcontract with a third party to obtain materials, equipment or machinery, in order to enable the operation of a vending facility.

(2) The commission may transfer to the person with a visual impairment ownership of any materials, equipment or machinery owned by the commission and supplied to the person.

SECTION 10. (1) As used in this section:

(a) "Political subdivision" has the meaning given that term in ORS 346.510.

(b) "Vending facility" has the meaning given that term in ORS 346.510.

(2) This state shall grant to persons who are blind a:

(a) Priority to establish and operate vending facilities, other than cafeterias and in community colleges, in public buildings in this state.

(b) Preference to operate cafeterias, and vending facilities in community colleges, in public buildings in this state.

(3) If a state agency, department or political subdivision constructs a new public building or facility, modifies an existing public building or facility, enters into or modifies a contract for, or otherwise seeks to procure, products or services that are customarily provided by the business enterprise program of the Commission for the Blind, including the operation of vending facilities, the agency, department or political subdivision complies with:

(a) Subsection (2)(a) of this section if the agency, department or political subdivision:

(A) Notifies the commission of the intended action and allows the commission to determine whether a vending facility manager licensed under ORS 346.510 to 346.570 is able to provide the product or service;

(B) Offers to the commission a right of first refusal;

(C) Does not charge the commission or vending facility manager any amount prohibited under ORS 346.520 (2); and

(D) Procures the vending service from the commission if the service:

(i) Is offered by the commission or by persons with visual impairments under the direction and supervision of the commission; and

(ii) Meets the requirements of the agency, department or political subdivision for quality and quantity of food stuffs and beverages available through the vending facility.

(b) Subsection (2)(b) of this section if the agency, department or political subdivision:

(A) Notifies the commission of the intended action and allows the commission to determine whether a vending facility manager licensed under ORS 346.510 to 346.570 is able to provide the product or service; and

(B) Procures the vending service from the commission if the service:

(i) Is offered by the commission or by persons with visual impairments under the direction and supervision of the commission;

(ii) Meets the requirements of the agency, department or political subdivision for quality and quantity of food stuffs and beverages available through the vending facility; and

(iii) Is offered in a bid that is equal to any other bids submitted.

SECTION 11. ORS 346.290 is amended to read:

346.290. (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 funds made available to the Commission for the Blind under ORS 346.270 or deposited pursuant to [ORS 346.540] **section 2 of this 2017 Act**, all moneys received by the commission for promoting the welfare of persons with visual impairments shall be paid into the State Treasury and credited to the Commission for the Blind Account.

(2) All moneys in the Commission for the Blind Account are continuously appropriated to the commission for use by the commission for the respective purposes authorized by law.

(3) The commission 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.

SECTION 12. ORS 346.510 is amended to read: 346.510. As used in ORS 346.510 to 346.570, *the term*:

(1) "Cafeteria" means a food-dispensing facility:

(a) That can provide a variety of prepared foods and beverages;

(b) Where a patron may move through a self-service line;

(c) That may employ some servers to wait on patrons; and

(d) That provides seating suitable for patrons to consume meals.

(2) “Healthy vending item” and “local vending item” have the meanings given those terms by rules adopted by the Commission for the Blind in consultation with the Public Health Director and the business enterprise consumer committee.

[(1) “Operator” means the individual person who is blind and who is responsible for the day-to-day conduct of the vending facility operation.]

[(2)] (3) “Person who is blind” means a person [having] who has 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] and whose blindness is certified by a licensed physician who specializes in diseases of the eye.

(4) “Political subdivision” means a local government as defined in ORS 174.116, a municipality, town or village of this state.

[(3)] (5) “Public building” or “property” means [any] a building, land or other real property, or a portion of a building, land or other real property, that is owned, leased, managed or occupied by [any] a department or an agency of the State of Oregon or [any of its political subdivisions] by a political subdivision, except for a public elementary [and] school, a secondary [schools] school, a public university listed in ORS 352.002 or a public corporation created pursuant to ORS 353.020.

[(4)] (6) “Vending facility” means:

(a) [Such] Shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment [as] that are necessary or customarily used for the vending of [such articles as may be] articles, including an established mix of healthy vending items approved by the Commission for the Blind and the agency [having care, custody and control of the building or property in or on which], department or political subdivision charged with maintaining the public building or property where the vending facility is located;

(b) Manual or coin-operated vending machines or similar devices for vending [such] articles, including machines or devices that accept electronic payment; or

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

(7) “Vending facility manager” means a person who is:

(a) Blind;

(b) Responsible for the day-to-day conduct of the vending facility operation; and

(c) Licensed under ORS 346.510 to 346.570.

SECTION 13. ORS 346.520 is amended to read:

346.520. (1) For [the] purposes of providing persons who are blind with remunerative employment, enlarging the economic opportunities of [those] persons who are blind and stimulating [them] persons who are blind to greater efforts to make themselves self-supporting with independent livelihoods, persons who are blind and who are 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] have priority in managing vending facilities in or on any public buildings or properties where, in the discretion of the [head of the department or agency] agency, department or political subdivision in charge of the maintenance of [such] the public 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] agency, department or political subdivision charged with maintaining a public building or property [in or on which] where a vending facility is operated under ORS 346.510 to 346.570 may not:

(a) Charge the commission [for the Blind] or persons who are blind and who are licensed under the provisions of ORS 346.510 to 346.570 any amount for:

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

[(b)] (B) Utility costs incurred in the operation of the vending facility; or

(C) The priority, right, permit, license or lease to operate a vending facility in or on the public building or property.

(b) Require that the commission or the vending facility manager pay to the agency, department or political subdivision any portion of a commission, gratuity or revenue earned by the vending facility manager from the operation of the vending facility.

(3) Subsection (2) of this section does not apply to charges imposed by the Department of Transportation or the Travel Information Council. Subject to the availability of funds, the department and the council may refrain from charging any amount for rental of space or utility costs described in subsection (2) of this section.

SECTION 14. ORS 346.530 is amended to read:

346.530. (1) Each [head of the department or agency in charge of the maintenance of] agency, department or political subdivision charged with maintaining public buildings or properties shall:

(a) [Periodically] Annually 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 a permit for operation of any vending facility, inform the commission [for the Blind of such contemplated] of the pending 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*] **that are or may be** under the jurisdiction of the **agency**, department or [*agency*] **political subdivision** 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*] **offers** to operate a vending facility under [*the provisions of*] this section and the offer is not accepted for reasons other than the decision **not** to have [*no*] a vending facility on the premises, [*such head of the department or*] **the agency, department or political subdivision** shall notify the commission in writing of the reasons for refusing [*its*] **the commission's offer**[, *including but not limited to the terms and conditions of the offer which was accepted, if any*]. **The agency, department or political subdivision shall offer the commission an opportunity to resolve the concerns raised in the written notice.**

(3) Any contract or agreement **between the commission and an agency, department or political subdivision relating to the operation of a vending facility** entered into subsequent to July 1, 1975, [*which*] **that** is not in compliance with or **that** is in violation of ORS [*346.220 and*] 346.510 to 346.570 **and section 10 of this 2017 Act**, [*shall be*] **is null and void.**

SECTION 15. ORS 346.540 is amended to read:

346.540. (1) The Commission for the Blind shall:

(a) [*Make surveys of*] **As the commission determines is necessary, survey** public buildings or properties to determine [*their*] **the suitability of the public buildings or properties** as locations for vending facilities to be operated by persons who are blind and advise the [*heads of departments or*] **agencies, departments or political subdivisions** charged with [*the maintenance of such*] **maintaining the public** buildings or properties [*as to their*] **of the commission's findings.**

(b) With the consent of the [*head of the department or*] **agency, department or political subdivision** charged with [*the maintenance of*] **maintaining** the buildings or properties, establish vending facilities in those locations [*which*] **that** the commission [*for the Blind has determined to be*] **determines are** suitable[, *and may enter into leases or licensing agreements therefor*] **and enter into agreements to operate the vending facilities.**

(c) **Recruit**, select, train, license and install qualified persons who are blind as managers of [*such*] vending facilities **in public buildings or properties.**

(d) Adopt rules as [*it may from time to time deem*] necessary to [*assure*] **ensure** the proper and satisfactory operation of [*such*] vending facilities[.]

and for the benefit of vending facility [*operators*] **managers.**

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

(f) **Not later than January 15 of each year, submit an annual report on the performance of the commission's business enterprise program to the interim committees of the Legislative Assembly related to health and human services. The commission shall include with the report the results of any surveys made under paragraph (a) of this subsection that were conducted since the submission of the previous year's report, and any refusals from agencies, departments or political subdivisions to operate vending facilities in public buildings or properties.**

(2) **The commission may enter into agreements in compliance with ORS chapter 190 to operate vending facilities located in public buildings or on public properties described in subsection (1)(b) of this section.**

(2) (3) If the [*head of the department or agency*] **agency, department or political subdivision** charged with [*the maintenance of*] **maintaining** public buildings or properties does not consent to the establishment of vending facilities in locations in the **public** building or on the **public** property [*which were determined suitable by the commission, that person*] **that the commission determines are suitable, the agency, department or political subdivision** 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.*

SECTION 16. ORS 346.550 is amended to read:

346.550. A vending facility operated under the provisions of ORS 346.510 to 346.570 [*shall*] **must** 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*] **state agency, department or [agency] political subdivision** [*in charge of the maintenance of*] **charged with maintaining the public** building or property in or on which [*such*] **the vending** facility is operated.

SECTION 17. ORS 346.560 is amended to read:

346.560. The [operator] **vending facility manager** of each vending facility operated under [the provisions of] ORS 346.510 to 346.570 [shall be] **is** subject to the provisions of any [and all] **policies, rules, laws and ordinances [applying] that apply** within the territory [within which such] **where the vending facility is located, including [those requiring] any laws and ordinances that require** a license or permit for the conduct of [such business or any particular aspect thereof] **any aspect of the operation of the vending facility.**

SECTION 18. ORS 293.701 is amended to read: 293.701. As used in ORS 293.701 to 293.857, unless the context requires otherwise:

(1) "Council" means the Oregon Investment Council.

(2) "Investment funds" means:

(a) Public Employees Retirement Fund referred to in ORS 238.660;

(b) Industrial Accident Fund referred to in ORS 656.632;

(c) Consumer and Business Services Fund referred to in ORS 705.145;

(d) Employment Department Special Administrative Fund referred to in ORS 657.822;

(e) Insurance Fund referred to in ORS 278.425;

(f) Funds under the control and administration of the Department of State Lands;

(g) Oregon Student Assistance Fund referred to in ORS 348.570;

(h) Moneys made available to the Commission for the Blind under ORS 346.270 and [346.540] **section 2 of this 2017 Act** or rules adopted thereunder;

(i) Forest Development Revenue Bond Fund referred to in ORS 530.147 and State Forestry General Obligation Bond Fund referred to in ORS 530.280;

(j) Oregon War Veterans' Fund referred to in ORS 407.495;

(k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;

(l) World War II Veterans' Compensation Fund;

(m) World War II Veterans' Bond Sinking Fund;

(n) Funds in the hands of the State Treasurer that are not required to meet current demands and that are invested in the Oregon Short Term Fund established under ORS 293.728 or in another commingled investment vehicle;

(o) State funds that are not subject to the control and administration of officers or bodies specifically designated by law;

(p) Funds derived from the sale of state bonds;

(q) Social Security Revolving Account referred to in ORS 237.490;

(r) Public University Fund established by ORS 352.450;

(s) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;

(t) Elderly and Disabled Special Transportation Fund established by ORS 391.800;

(u) Education Stability Fund established by ORS 348.696;

(v) Deferred Compensation Fund established under ORS 243.411;

(w) Trust for Cultural Development Account established under ORS 359.405; and

(x) The State Library Donation Fund and the Talking Book and Braille Library Endowment Fund subaccount established under ORS 357.195.

(3) "Investment officer" means the State Treasurer in the capacity as investment officer for the council.

SECTION 19. (1) The Commission for the Blind shall provide in any agreement with a vending facility manager that the commission shall increase the percentage of net proceeds collected under section 3 of this 2017 Act by four percent if a vending facility manager licensed under ORS 346.510 to 346.570 does not operate in compliance with the requirements of the vending facility manager statement described in section 5 of this 2017 Act.

(2) A vending facility manager who is party to an agreement for the operation of a vending facility that is in effect on or before the effective date of this 2017 Act is not subject to sections 5 and 6 of this 2017 Act and may continue to operate pursuant to the agreement until December 31, 2019.

SECTION 20. Section 19 of this 2017 Act is repealed on December 31, 2019.

SECTION 21. The requirements of sections 5 and 6 of this 2017 Act and the amendments to ORS 346.530 by section 14 of this 2017 Act apply to agreements entered into on or after January 1, 2018.

SECTION 22. Not later than November 15, 2017, the Commission for the Blind shall adopt the rules required under sections 3, 5 and 6 of this 2017 Act and ORS 346.510 and 346.540 by sections 12 and 15 of this 2017 Act, and may amend the rules thereafter.

SECTION 23. ORS 346.210 and 346.220 are repealed.

SECTION 24. (1) Sections 2, 3, 5 to 8 and 19 of this 2017 Act and the amendments to ORS 293.701, 346.290, 346.510, 346.520, 346.530, 346.540, 346.550 and 346.560 by sections 11 to 18 of this 2017 Act become operative on January 1, 2018.

(2) The Commission for the Blind may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission by sections 2, 3, 5 to 8 and 19 of this 2017 Act and the amendments to ORS 293.701, 346.290, 346.510, 346.520, 346.530, 346.540, 346.550 and 346.560 by sections 11 to 18 of this 2017 Act.

SECTION 25. The amendments to section 3 of this 2017 Act by section 4 of this 2017 Act become operative on January 1, 2020.

SECTION 26. This 2017 Act takes effect on the 91st day after the date on which the 2017

regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor August 15, 2017

Filed in the office of Secretary of State August 16, 2017

Effective date October 6, 2017
