

CHAPTER 3321
DEPARTMENT OF ECONOMIC SECURITY
SERVICES FOR THE BLIND

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VENDING STANDS AND BUSINESS ENTERPRISES

3321.0100 STATUTORY AUTHORITY AND SCOPE OF RULES.

Pursuant to Minnesota Statutes, section 248.07, subdivision 14a, this chapter is issued by the commissioner of economic security to govern all vending stands and business enterprises established by the Services for the Blind, Department of Economic Security, for which the department is responsible. Licenses to blind persons will be issued according to this chapter and applicable statutes by the commissioner or a designee, hereinafter to be known as the licensing agency. A licensed blind person is an independent contractor to the licensing agency and is not an employee of the licensing agency or the state of Minnesota.

Statutory Authority: *MS s 248.07*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12; 15 SR 692; L 1994 c 483 s 1*

3321.0200 SELECTION OF STAND OPERATORS.

The selection of stand operators will be made on an objective basis, including a thorough evaluation of the following: experience, training, former vocations, education, and other factors that relate to job requirements. Preference will be given to blind persons who are in need of employment. The following specific requirements will also be adhered to. Blind persons selected as operators will:

A. be determined, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, to have:

(1) not more than 20/200 central visual acuity in the better eye with correcting lenses; or

(2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its evident diameter subtends an angle of no greater than 20 degrees;

B. be citizens of the United States; and

C. be certified as qualified for the operation of a vending stand by the rehabilitation staff of the Services for the Blind, Department of Economic Security.

Statutory Authority: *MS s 248.07 subd 7*

History: *L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12; L 1994 c 483 s 1*

3321.0300 PERIOD OF LICENSE.

Each license will be issued upon execution of an operator's first agreement pursuant to part 3321.0500, subpart 1, for an indefinite period but subject to termination by written notice for good cause shown, including but not limited to:

A. failure to operate according to parts 3321.0100 to 3321.1400, the agreement with the operator, or the terms and conditions of the licensing agency's permit to operate in the building or property;

B. improvement of vision so that the operator no longer meets the definition of blindness under part 3321.0200;

C. extended illness with medically documented diagnosis of prolonged incapacity of the operator to operate the vending stand in a manner consistent with the needs of the location or other available locations in the program;

D. withdrawal of the operator from the program upon the operator's written notification to the licensing agency; and

E. failure to work as a licensed operator, relief operator, or take additional approved training related to the operation of an enterprise, a minimum of two weeks per year unless on an approved leave.

A license may be issued to a blind person to operate an enterprise, other than a vending machine enterprise, in the program without that person taking vending machine training. No licensee may be placed or transferred to a vending machine enterprise without first taking and satisfactorily completing vending machine training sufficient to operate the vending stand or business enterprise in question.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.0350 DETERMINATION OF VISUAL STATUS.

Subpart 1. Testing; evidence of visual acuity. In order to equitably determine ongoing compliance with visual requirements for operators under parts 3321.0200 and 3321.0300, item B, in years ending in zero and five all licensed vendors must provide current ophthalmological or optometric evidence documenting their visual status. "Current" means evidence of an examination no more than six months old from the date of submission. Evidence is sufficient if it allows the state ophthalmological consultant to determine whether or not the operator is legally blind. If the ophthalmological consultant determines the operator to be legally blind and specifically states that the blindness is permanent, the operator will not be subject to future examinations under this part.

Subp. 2. License termination; failure to prove visual acuity. Operators not providing ophthalmological or optometric evidence are presumed to be not legally blind and action must be taken under part 3321.0300 to terminate their license.

Operators found to be not legally blind on the basis of the submitted evidence shall have their licenses terminated under part 3321.0300. Their termination date is one year from the date of their notice of license termination. The operator must immediately be referred to the vocational rehabilitation unit of Services for the Blind and Visually Handicapped to be evaluated for eligibility for services that would lead to alternative vocational opportunities.

Subp. 3. Cost of examination. An operator may enter as an expense on their books submitted to the licensing agency the cost of obtaining ophthalmological or optometric evidence required by this chapter.

Statutory Authority: *MS s 248.07*

History: *15 SR 692*

3321.0400 TERMINATION OF LICENSE.

The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose license is proposed to be revoked. This notification shall state the grounds for such action and shall inform the operator of the right to appeal the action. The operator will be afforded an opportunity for a fair hearing before termination of the license as described in part 3321.1200.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0500 OPERATOR AGREEMENTS.

Subpart 1. Requirement. Each licensed operator will sign an agreement for the operation of an assigned vending stand, and will sign a new agreement each time the operator moves or transfers to another vending stand.

Subp. 2. Revocation or suspension of agreement. The operator's agreement to operate a vending stand may be revoked or temporarily suspended in those instances where the

operation, integrity, or reputation of the program may be damaged. The licensing agency shall promptly notify by certified mail or personal service any vending stand operator whose agreement is suspended or revoked. The notification shall state the grounds for such action and shall inform the operator of the right to appeal the action, as described in part 3321.1200. The action to suspend or revoke an agreement does not automatically mean the termination of the operator's license. Notice of intent to terminate the operator's license shall require a separate notice, as described in part 3321.0400.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.0600 FURNISHING EQUIPMENT AND INITIAL STOCKS.

The licensing agency is responsible:

A. for furnishing each vending stand or business enterprise with adequate, suitable equipment and replacement of such equipment and assistance in maintenance and repair of equipment; and

B. for furnishing each vending stand or business enterprise with adequate initial stocks of merchandise and supplies. Subsequent purchase of merchandise shall be made by the operator out of current receipts. Merchandise shall be replaced as sold, maintaining the inventory at the minimum of the original inventory unless mutually agreed otherwise by the licensing agency and the operator.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.0700 VENDING STAND EQUIPMENT AND STOCKS; OWNERSHIP.

Subpart 1. **Inventories.** The right to, title to, and interest in the vending stand equipment used in the program is vested in the state of Minnesota. Operators will be required to acquire ownership of merchandise and supplies through reimbursing the licensing agency for such expenditures by monthly payments extended over a three-year period. Upon approval of the licensing agency, additional time may be granted in hardship cases, the purpose of which is to assure that no individual be denied the opportunity to become an operator because of the operator's inability to purchase the initial stock. Upon termination of the operator's license or when operators withdraw from a specific vending stand or business enterprise location, the licensing agency will purchase for the new operator, at cost, salable merchandise and, at an amortized price, supplies remaining in the stand, assuming there is no amount owing in the departing operator's accounts with the licensing agency. No fixtures or equipment shall be added, altered, or removed from the stand except at the direction of the licensing agency. The operator will exercise all possible care in the use of fixtures and equipment, making no alterations, changes, or additions. When a licensed operator under contract dies, the licensing agency must immediately take an inventory at the stand in cooperation with a member of the operator's family or a representative of the operator's estate. The licensing agency must then prepare a summary accounting of the deceased licensed operator's accounts with the licensing agency. If the balance is in favor of the licensing agency, the estate must pay that balance. If the balance is in favor of the deceased licensed operator, the licensing agency must pay the balance to the estate. The warrant will be made payable to the "Estate of [[licensed operator's name]]."

Subp. 2. **Operator determination of acquisition.** Beginning 12 months following the effective date of this subpart, an operator who begins to operate at a vending stand or business enterprise location shall determine what merchandise or supplies the new operator shall purchase from the departing operator. In the case of an operator disagreement over the purchase of supplies or merchandise, the departing operator may request that the licensing agency intervene and make a final decision. The departing operator shall be responsible for disposing of the merchandise or supply inventory not purchased by the new operator.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.0800 VENDING STAND PROCEEDS; FUNDS SET ASIDE.

Subpart 1. **Amounts.** The licensing agency will set aside or cause to be set aside from the monthly net proceeds of the operation of vending stands the following amounts:

- A. on the first \$100 or portion thereof, 2 percent;
- B. on the second \$100 or portion thereof, 4 percent;
- C. on the third \$100 or portion thereof, 6 percent;
- D. on the fourth \$100 or portion thereof, 8 percent;
- E. on the fifth \$100 or portion thereof, 10 percent;
- F. on the sixth \$100 or portion thereof, 12 percent;
- G. on the seventh \$100 or portion thereof, 14 percent; and
- H. any amounts over \$700, 16 percent.

"Net proceeds," as used herein, means the monthly cash receipts including any vending machine or other income, less merchandise purchases, general expenses, and payroll, (excluding set-aside charges).

Subp. 2. Other conditions of funds. This rate supersedes any previous rate heretofore established by any agreements or policies of the licensing agency. The operator shall pay these set-aside funds monthly to the licensing agency. These set-aside funds shall be used only to the extent necessary and may be used for the sole purpose of:

- A. maintenance and replacement of equipment;
- B. the purchase of new equipment; and
- C. the management services that are specified in state law.

Subp. 3. Set-aside schedule. The operator management committee, as defined in part 3321.1100, subpart 3, will participate with the licensing agency in the establishment of a set-aside schedule covering each of the purposes for which the set-aside funds are intended to be used, and will be reviewed annually to determine the need for change based upon the previous year's expenditures. The schedule shall be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with the allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. Changes, when necessary, shall be by amendment to parts 3321.0100 to 3321.1400.

Subp. 4. Due date. Funds set aside from vending stand proceeds are due by the 25th of the following month.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.0900 VENDING MACHINES ON FEDERAL PROPERTY; INCOME.

Subpart 1. Income accrual to operator. Vending machine income from vending machines on federal property which has been disbursed to the licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each blind operator operating a vending stand on such federal property in an amount not to exceed the average net income of the total number of blind operators within the state program, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind operator in any amount exceeding the average net income of the total number of blind operators in the United States.

Subp. 2. Minimum income. No blind operator shall receive less vending machine income than the operator was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

Subp. 3. Combination of machines to make a stand. No limitation shall be imposed on income from vending machines combined to create a vending stand when such stand is maintained, serviced, or operated by a blind operator. The licensing agency will retain vending machine income disbursed by a property managing department, agency, or instrumentality of the United States in excess of the amounts eligible to accrue to blind operators.

Subp. 4. Quarterly disbursement. The licensing agency will disburse vending machine income to blind operators on at least a quarterly basis.

Subp. 5. Use of income retained by agency. Vending machine income retained by the licensing agency will be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vaca-

tion time for blind operators, if it is so determined by a majority vote of the licensed operators, after each operator has been furnished information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used for one or more of the following: maintenance and replacement of equipment; purchase of new equipment; or management services. Any set-aside charged to blind operators shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*

3321.1000 OPERATORS; POLICIES.

Subpart 1. **Net proceeds.** Each operator shall be entitled to the net proceeds of the operation of the vending stand he/she operates, less the amount set aside by the licensing agency.

Subp. 2. **Operator duties.** Each operator shall agree to:

A. perform faithfully and to the best of the operator's ability the necessary duties in connection with the operation of a vending stand according to the licensing agency's rules, the terms of the licensing agency's permit to operate in the building or property, and the agreement with the operator;

B. cooperate with official and duly authorized representatives of the licensing agency in connection with their official program responsibilities;

C. operate the vending stand according to all applicable health laws and regulations and any other applicable federal, state, or local law or regulation;

D. furnish monthly reports to the licensing agency by the tenth of the following month, listing daily sales by type, other income, purchases, other expenditures, and personal withdrawals, and attaching all statements and invoices properly received. Inventory of merchandise will be included when requested;

E. indemnify and hold harmless the state of Minnesota, its officers, or agents, for any acts or omissions of said operator that may result in the operator's liability to third parties, and the state shall not be liable for negligence based on any theory of liability; and

F. provide the licensing agency at least 60 days notice of intent to leave the program.

Subp. 3. **Agency duties.** The licensing agency assumes responsibility for providing to the vending stand operators such supervision, assistance, and training as may be necessary to ensure the operation of each vending stand in the most productive and efficient manner possible. This supervision, assistance, and training must be performed according to the following policies in addition to other provisions of parts 3321.0100 to 3321.1400.

A. In entering agreements for new or vacated stands, preference on the basis of seniority of experience of operating stands under the control of the licensing agency shall be given to capable operators who are deemed competent to handle the enterprise under consideration. The application of such preference will not prohibit the licensing agency from selecting an operator from the community in which the stand is located. No operator may transfer to another stand and bid back into the stand the operator just left in the same bidding sequence. An operator is in default if either of the following is more than 30 days late:

(1) reports under subpart 2, item D; or

(2) payment in full under part 3321.0800.

In case of any default, the operator will be assessed a late fee of \$20. The licensing agency shall notify the operator of the default and penalty. An operator who is in default twice within six months will not be permitted to transfer to new or vacated stands, after notice of disqualification from the licensing agency. The operator may regain eligibility to transfer if the operator has cured any prior default and has not been in default for six consecutive months after the prior defaults have been cured. Seniority shall be determined on the basis of continuous service in the stand program with the licensing agency. A leave of absence for medical reasons, supported by a doctors statement, may be granted by the licensing agency and operator management committee and the operator shall continue to accrue seniority during the leave. A medical leave of absence for up to three months, which may be later extended for an additional three months, may be granted under a plan in which the requesting operator

retains responsibility for and general management of the current vending stand. A medical leave up to one year may also be granted under a plan in which the operator permanently gives up all responsibility for and rights to the current vending stand. A doctor's statement of ability to return to work is required before an operator's actual return to a stand.

A general leave of absence may be granted by the licensing agency and operator management committee for a period up to two years during which time the operator shall not accrue seniority but may exercise seniority rights for new or vacated stands. The operator shall retain seniority accrued up to the date of the leave. An operator on general leave shall give up all rights to the vending stand or business enterprise which they are operating.

B. When it has been determined that a relief operator or an assistant or assistants must be employed, the operator shall first make attempts to locate a handicapped individual before approving the employment of a nonhandicapped person. The wages paid for any help, including bookkeeping, must be in reasonable proportion to work performed and must be approved by the licensing agency.

C. The licensing agency shall approve the items and the selling prices at which those items may be sold, which comprise the merchandise inventory at each vending stand.

D. The operator will acquire liability and if necessary workers' compensation insurance for the vending stand. The agency will purchase liability insurance for a vending stand only when, in the opinion of the licensing agency, it is deemed essential that the agency purchase this insurance.

E. The licensing agency shall review all operator books and other information with specific attention to expenses and take those steps necessary to ensure operator payment of those expenses.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.1100 OPERATOR MANAGEMENT COMMITTEE.

Subpart 1. **Annual election for representatives.** The licensing agency and the elections subcommittee of the operator management committee will conduct an annual election for representatives to the operator management committee.

Subp. 2. **Representation, nominations, and terms.** The committee will consist of one representative from each of the program districts (at present six) and two representatives at large.

A. Nominations will be solicited in each district for that district and statewide for at-large representatives.

B. Elections will be by licensed operators in each district for their district and statewide for at-large representatives.

C. Each term will be two years, with a limit of two successive terms.

D. The committee shall elect its own chair and other officers. The chair shall appoint subcommittees as necessary.

E. The full committee will meet a minimum of four times a year. Meetings may be called by notice of either the licensing agency or the chair of the committee. Subcommittees will meet as necessary to carry on their functions.

F. The committee shall establish bylaws for the further rules, functioning, and guidance of the committee.

Subp. 3. **Purpose and function of committee.** The operator management committee's purpose and function is to:

A. participate with the licensing agency in major administrative decisions and policy and program development;

B. receive grievances of vending stand operators and serve as their advocates;

C. participate with the licensing agency in the administration of the transfer and promotion system for vending stand operators;

D. participate with the licensing agency in developing training and retraining programs; and

E. sponsor, with the assistance of the licensing agency, meetings and instructional conferences for vending stand operators.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.1200 REVIEW OF AGENCY DECISIONS.

Subpart 1. **Written notice.** Operators shall be informed in writing at the time they are licensed of their right to and the procedures to be followed in obtaining an administrative review or a fair hearing regarding an agency decision.

Subp. 2. **Informal review procedures.** An opportunity for an informal administrative review will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators an informal administrative review:

A. An operator or the operator's designee (who need not be an attorney) may request in writing, within 15 working days of the occurrence of the action, administrative review of the licensing agency action. This review will be made only by a member or members of the administrative staff of the agency who have not in any way participated in the agency action in question.

B. The administrative review will be held during regular agency working hours, at a district or local office location. An administrative review will be conducted within 30 working days of receipt by the licensing agency of such a written request.

C. Documentation as to written requests for administrative review and actions and decisions resulting therefrom shall be maintained as part of the official record of the administrative review process.

D. When an informal administrative review does not resolve a dispute to the satisfaction of a blind operator, the blind operator may request that the licensing agency provide a fair hearing.

Subp. 3. **Hearing procedures.** An opportunity for a fair hearing conducted pursuant to Minnesota Statutes, chapter 14 will be afforded to each operator dissatisfied with any action arising from the operation or administration of the vending stand program. The following procedures will be followed in granting operators a fair hearing.

A. If an operator requests a fair hearing, such a request must be made either within 15 working days after an adverse decision based on an administrative review or, in the absence of an administrative review, within 15 working days of the occurrence of the action with which the operator is dissatisfied.

B. An operator or the operator's designee must request a fair hearing in writing. This request must be transmitted to the director of the licensing agency personally or by certified mail, return receipt requested. The request must specify the action being appealed and state in detail the basis for the appeal.

C. The hearing shall be held at a time and place convenient and accessible to the operator requesting a fair hearing. A hearing held during regular agency working hours and located at the state agency central office will be deemed among the convenient times and places. Upon receipt of the request, the licensing agency shall immediately request a hearing date from the state Office of Administrative Hearings, whose designee shall serve as an impartial presiding officer, and then notify the operator of the time and place for the hearing. The operator must be provided sufficient preparation time before the hearing. The operator shall be provided a copy of the hearing procedures and rules.

D. The operator has the right to be represented by counsel, and may present witnesses and cross-examine adverse witnesses.

E. A transcript of the proceeding must be available to the operator.

F. After receipt of the report of the administrative law judge, the director shall issue a written decision within 15 days.

Subp. 4. **Arbitration panel.** If an operator is dissatisfied with the decision rendered after a full evidentiary hearing, the operator may request that an arbitration panel be con-

vened by filing a complaint with the secretary of the Department of Education, as authorized by federal regulations at Code of Federal Regulations, title 34, section 395.13 (1981).

Statutory Authority: *MS s 248.07*

History: *L 1984 c 640 s 32; L 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.1300 ACCESS TO PROGRAM AND FINANCIAL INFORMATION.

Each operator shall be provided access to all program and financial data of the licensing agency relevant to the operation of the vending stand program, including quarterly and annual financial reports. Insofar as is practicable, the data shall be made available in braille or recorded tape. At the request of an operator, the licensing agency will arrange a convenient time to assist in the interpretation of the data. The operator management committee organized under part 3321.1100 shall be provided all individual and program data necessary to carry out its purpose and function.

Statutory Authority: *MS s 248.07*

History: *1Sp1985 c 14 art 9 s 12; 15 SR 692*

3321.1400 OPERATOR'S RESPONSIBILITIES AND PRIVILEGES; EXPLANATION.

The licensing agency rules, the agreement with the operator, and any applicable regulations of the authority having charge of the property on which the vending stand or business enterprise is located shall be read and explained to each operator. A copy of the agreement and these parts will be furnished to each operator. The agreement between the licensing agency and the operator, consistent with the provisions of these parts and signed by the operator, will be the operator's attestation that the agreement and these parts have been read to the operator and that the operator agrees to abide by them.

Statutory Authority: *MS s 248.07 subd 7*

History: *1Sp1985 c 14 art 9 s 12*