

CHAPTER 326
FORMERLY
HOUSE BILL NO. 393

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE STATE USE LAW AND THE COMMISSION FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED INDIVIDUALS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IX, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~Persons~~ Individuals with Disabilities ~~and Partial Disabilities.~~

CHAPTER 96. ~~STATE USE LAW~~ STATEWIDE CONTRACTS TO SUPPORT EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES.

§ 9601. Declaration of purpose.

The purpose of this chapter is to further the policy of the State to encourage and assist ~~blind and other severely handicapped~~ individuals with visual impairments and other disabilities to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for their products and services, thereby enhancing the dignity and capacity for self-support of ~~blind and other severely handicapped persons, and minimizing their dependence on welfare as well as the need for the State to provide costly institutionalization~~ individuals with visual impairments and other disabilities and decreasing their reliance on government benefits.

§ 9602. Definitions.

~~The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning~~ For the purposes of this chapter:

(1) "Ability Network of Delaware" or "AND", or any succeeding name of this entity, means the State Association whose membership includes community rehabilitation programs and other similar organizations, both public and private.

(1) "Agency of this State" ~~shall include~~ or "Agency" means all counties, ~~towns~~ municipalities, school ~~districts~~ districts, or any other entity which is supported in whole or in part by funds that the General Assembly appropriated by the General Assembly.

(2) ~~"Blind" shall include all persons whose~~ "Visual impairment" means central visual acuity that meets 1 of the following criteria:

a. ~~does~~ Does not exceed ~~20/200~~ 20/70, including blindness, in the better eye with correcting ~~lenses~~ lenses.

b. ~~or whose visual acuity, if~~ better than 20/200, 20/70, is accompanied by a limit to the better field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

~~(3) "Delaware Association of Rehabilitation Facilities (DELARF)" means the Association whose membership includes organizations, both public and private, whose primary purpose is to provide rehabilitation services, and individuals who have a recognized interest in rehabilitation. The State Association's purpose is to stimulate interest and help to insure suitable programming of vocational, medical, social, psychological rehabilitation.~~

(4) "Central nonprofit agency" or "CNA" means a public or private entity organized under the laws of this State, that the Commission selects to do at least 1 of the following:

a. Facilitate the provision, by subcontract or other means, of set-aside services or the production and distribution of set-aside commodities, in order to employ individuals with visual impairments and other disabilities.

b. Provide information the Commission has required under the provisions of this chapter and any applicable regulations.

(5) "Commission," when capitalized and used as a noun, means the Commission for Statewide Contracts to Support Employment for Individuals with Disabilities.

(6) "Community rehabilitation program" or "CRP" means a public or private entity that provides or coordinates rehabilitation services for individuals with visual impairments and other disabilities, including assessment, customized employment, medical, personal assistance, psychiatric, psychological, rehabilitation technology, supported employment, or vocational services.

(7) "Disability" means as it is defined in the Americans With Disabilities Act of 1990, 42 U.S.C. 12102.

(8) "Family member" means an individual's parent, grandparent, stepparent, sibling, or spouse.

(4) "Food service" means restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with any of the foregoing.

(5) "Public office building" means any building owned or leased by the State, State and used for governmental purposes. It does not include public schools, schools or buildings at residential institutions operated by the State. No "Public office building" does not mean a building or property, property that is used as a public recreational facility, owned or leased by the State and State, and operated or occupied by the Department of National Resources and Environmental Control or the State Forestry Department, shall be included within this definition. Food "Public office building" does not mean food service located in or on the property of any public building on the Delaware Turnpike shall not be included in this definition.

~~(6) "Qualified rehabilitation facility" shall mean a rehabilitation facility:~~

~~a. Which is owned and operated by a corporation or association organized under the laws of the United States or of this State, operated in the interest of severely handicapped individuals, no part of the net earnings of which inures, or any lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended; and~~

~~b. Which is certified as a sheltered workshop and/or work activities center by the Wage and Hour Division of the United States Department of Labor; and~~

~~c. Which meets the national standards for accepted rehabilitation facilities, as certified by a national rehabilitation accreditation association such as the Commission of Accreditation of Rehabilitation Facilities (CARF); and~~

~~d. Which complies with any applicable health and safety standards prescribed by the Secretary of Labor of the United States.~~

(11) "Set-aside" means a service or product that has been exempted from procurement under Chapter 69 of Title 29 and awarded by the Commission for a price that the Commission approved.

~~(7) "Severely handicapped" and "severely handicapped individuals" mean:~~

~~a. An individual or class of individuals who is under a physical or mental disability other than blindness which constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from engaging in normal competitive employment. The handicap substantially limits 1 or more of the person's major life activities.~~

~~b. An individual who has met the admission requirements of a qualified rehabilitation facility.~~

~~(8) "Workshop" or "sheltered workshop" shall mean the Delaware Industries for the Blind.~~

~~§ 9603. Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals Statewide Contracts to Support Employment for Individuals with Disabilities – Appointment; composition; terms; vacancies; compensation.~~

~~(a) A Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals shall be appointed by the Governor to advise the Director of the Division for the Visually Impaired in the management of the Delaware Industries for the Blind operated by the Division. The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities is established to fulfill the duties under § 9604 of this title. The Commission shall be composed of 9 members as follows: From the private sector, a person with~~

~~business experience in production, a person skilled in marketing, a person experienced in industrial purchasing, a person experienced in industrial engineering, a person experienced in sales, a person experienced in accounting, a person experienced in the field of advertising; and from state government, the Director of Government Support Services and the Secretary of Finance or their designated representatives, and, ex officio, the Director of the Division for the Visually Impaired and a representative from the Delaware Association of Rehabilitation Facilities. The members of the Commission shall be appointed for terms of 4 years and shall serve until new appointments are made at the end of their terms. Four of the members appointed in 1982 shall serve terms of 2 years in order to stagger the expiration dates of the terms of the members from the private sector. No more than 5 of the members from the private sector shall be members of the same political party.~~

(b) The Commission shall consist of 7 voting members and 3 non-voting members and shall be comprised of the following:

(1) Voting members:

- a. The Director of Government Support Services.
- b. The Director of the Division of Vocational Rehabilitation.
- c. The Secretary of Finance.
- d. Four public members appointed by the Governor.

1. At least 1 of these must be an individual with a disability or a family member of an individual with a disability, who is 14 years old or younger.

2. With the exception of a public member appointed under paragraph (b)(1)(d)1. of this section, no public member may be affiliated with an entity or organization that has or is seeking to obtain a set-aside contract under this chapter.

(2) Non-voting members:

- a. One representative of a CRP that employs individuals with disabilities.
- b. The Director of the Ability Network of Delaware.
- c. The Director of the Division for the Visually Impaired.

(c) Members who serve by virtue of position may appoint a designee to serve in their stead.

(d) Appointed members and designees serve in their stead at the pleasure of their respective appointing authority.

(e) The Governor shall appoint 1 of the public members as the Commission Chair.

(f) A majority of the voting members on the Commission constitutes a quorum to conduct official business.

~~(b) Any private citizen member appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.~~

(c) Members of the Commission shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Commission, and for travel expenses when away from their homes or regular places of business.

(d) The Commission may secure, directly from any ~~agency~~ Agency of this State, information necessary to enable it to carry out this chapter. Upon request of the ~~Chairperson~~ Chair of the Commission, the head or administrator of such ~~state agency~~ Agency shall furnish the requested information to the Commission.

(e) The Commission shall, not later than 90 days following the close of each fiscal year, transmit to the Governor and to the General Assembly a report which shall include the names of the Commission members serving in the preceding fiscal year, the dates of the Commission meetings in that year, a description of its activities during that year, and any recommendations for changes in the law which the Commission might suggest.

(f) Notwithstanding any other provision of the Delaware Code, members of the Commission may participate in a meeting of the Commission by means of conference telephone or other communications equipment by which all persons participating in the meeting can hear each other. Participating in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

§ 9604. ~~Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals~~ The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities — Powers and duties; ~~sheltered workshop; qualified rehabilitation facility~~ community rehabilitation programs and central nonprofit agencies.

(a) ~~The Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals shall provide a~~ for Statewide Contracts to Support Employment for Individuals with Disabilities shall promote an expanded and constant market for products and services of ~~visually handicapped and severely handicapped individuals. The CRPs and other employers of individuals with visual impairments and other disabilities.~~

(1) At scheduled and noticed Commission meetings, the Director of the Division for the Visually Impaired ~~and the representative from the Delaware Association of Rehabilitation Facilities shall determine, with the advice of the Commission,~~ Director of the Ability Network of Delaware, or the Commission representative of a CRP that employs individuals with disabilities shall propose to the Commission potential set-aside contracts with Agencies and the price of all products manufactured and services provided by ~~the Delaware Industries for the Blind or qualified rehabilitation facility which a CRP or CNA that~~ are offered for sale to the various agencies of the Agencies of this State.

(2) The price of a Commission-approved, contracted set-aside shall recover for ~~the Delaware Industries for the Blind and qualified rehabilitation facility a CRP or CNA~~ the cost of raw materials, labor, ~~overhead~~ overhead, and delivery costs, but shall not include a profit to the Commission or to the Delaware Industries for the Blind or qualified rehabilitation facility. ~~The Director of the Division for the Visually Impaired and the representative from the Delaware Association of Rehabilitation Facilities, with the advice of the Commission,~~ may delivery. The Commission may do any of the following:

a. ~~revise~~ Revise such prices from time to time in accordance with changing cost ~~factors, factors.~~ Prior to the Commission voting on a proposal to revise prices, a subcommittee of the Commission shall review a proposal to revise prices and provide the Commission with advice regarding the proposal.

b. ~~and may make~~ Make such rules and regulations concerning specifications, time of ~~delivery~~ delivery, and other matters of operation as shall be necessary to carry out the purposes of the ~~Delaware Industries for the Blind and qualified rehabilitation facility~~ CRPs or CNAs and this chapter.

(b) The Commission shall create subcommittees to facilitate its work. ~~It~~ The subcommittees shall act as an advisory committee to the Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities in the operation of the Delaware Industries for the Blind and qualified rehabilitation facility and shall advise the Commission and provide technical assistance to the ~~Delaware Industries for the Blind in the areas of~~ Commission in areas such as employment practices, sales promotion, public relations, market development, market ~~analysis~~ analysis, and budget preparation.

(c) ~~The Commission shall create a subcommittee comprised of the Director of Government Support Services or the Director's designated representative, 2 appointed members of the Commission and the representative from the Delaware Association of Rehabilitation Facilities. This subcommittee shall function as advisors for qualified rehabilitation facilities and shall adopt policies and procedures for the awarding of contracts or subcontracts to qualified rehabilitation facilities. This subcommittee will select a provider for a product or service when more than 1 qualified rehabilitation facility submits quotations. Selection of the provider will be based on criteria set by this subcommittee to facilitate the equitable allocation of orders among qualified rehabilitation facilities. The subcommittee shall encourage diversity in products and services provided by qualified rehabilitation facilities and shall discourage unnecessary duplication or competition between qualified rehabilitation facilities.~~

(d) ~~The Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities shall publish periodically a~~ The Commission shall notify, in writing, Government Support Services whenever it grants a set-aside contract with Agencies and establishes a price for the products or services to be sold to Agencies pursuant to that contract. Government Support Services shall publish a list of products and services provided by the Delaware Industries for the Blind and qualified rehabilitation facilities

~~which CRPs or CNAs that~~ the Commission recommends as suitable for procurement by ~~agencies~~ Agencies of this State pursuant to this chapter. ~~The list shall be distributed to every person who procures materials for each agency of the State.~~

(e) The Commission shall promulgate regulations to govern its operations. The regulations shall address, at a minimum, the processes by which all of the following occur:

(1) CNAs are selected.

(2) Contracts, or portions of contracts, are set aside and awarded to CNAs or CRPs.

(3) Prices are set.

§ 9605. Procurement requirements for the State.

(a) If any ~~agency~~ Agency of this State intends to procure a product or service on the procurement list published by Government Support Services under § 9604, that ~~agency~~ Agency shall, in accordance with ~~the Commission~~ rules and regulations of ~~the Commission~~, procure such product or ~~service~~, service from a CNA or CRP at the price established by the Commission, ~~from the Delaware Industries for the Blind and from qualified rehabilitation facilities.~~ If the product or service is available within the period required by that ~~agency~~ Agency, such procurement ~~shall be~~ is mandatory. This chapter, however, ~~shall~~ does not apply in any case where products or services are available for procurement from any ~~agency~~ Agency of this State and procurement therefrom is required under any statute, ~~rule~~ rule, or regulation.

~~(b) In the procurement of~~ Agencies of this State shall give preference to procuring any product or service under this ~~chapter~~ preference shall be given by an agency of this State ~~chapter~~ to a product or service of the Delaware Industries for the Blind. ~~Waiver of such preference shall be provided in writing by the Director of the Division for the Visually Impaired to the Chairperson of the Commission for the Purchase of Products or Services of the Blind and Other Severely Handicapped Individuals~~ Upon approval by the Commission, the Director of Government Support Services may provide a waiver of the preference requirement under this subsection.

(c) In furthering the purposes of this chapter, ~~as set forth in § 9601 of this title~~, and in contributing to economy of government, it is the intent of the General Assembly that there be close cooperation between the Commission and any ~~agency of the~~ Agency of this State from which procurement of products or services is required under any state law. The Commission and any such ~~agency~~ Agency are authorized to enter into such contractual agreements, cooperative working ~~relationships~~ relationships, or other arrangements as may be ~~determined to be~~ necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any ~~agency~~ Agency of this State.

§ 9606. Food service in public office buildings.

(a) If any ~~governmental agency~~ Agency of this State intends to operate or continue food service in a public office building, that agency shall procure such food service from the Delaware Division for the Visually Impaired under the vending facility program authorized by 20 U.S.C. § 107 et seq. No ~~governmental agency~~ Agency shall charge the Division for the Visually Impaired or its food service vendors rent for food service operations operated under this section. In the event the Delaware Division for the Visually Impaired certifies in writing that it is unable to provide food service to a ~~governmental agency~~ Agency of this State who requests such service, the ~~governmental agency~~ Agency may seek food service from another provider.

(b) This section ~~shall~~ does not impair any ~~valid existing~~ contracts by ~~governmental agencies~~ Agencies of this State validly existing prior to July 11, 1988; however, at the expiration of such existing contracts, the mandates contained in this section shall be binding on the ~~governmental agency~~ Agency.

(c) This section ~~shall~~ does not apply to any office building owned or leased by any county or municipal ~~corporation.~~ corporation. ~~This section shall also not apply to~~ corporation, or any building leased, ~~used~~ used, or owned by any institution of higher education.

(d) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Any provision of 20 U.S.C. § 107 et seq. that limits accrual of vending machine income to the Division for the Visually Impaired on the basis of the annual income from such vending machines is not incorporated into the laws of this State by this ~~section; and~~ section.

(2) Any provision of 20 U.S.C. § 107 et seq. that governs the use of vending machine income which accrues to the Division for the Visually Impaired is not incorporated into the laws of this State by this section.

(e) The Secretary of the Department of Health and Social Services shall have the power to promulgate all rules and regulations necessary to accomplish the purposes of this section.

Approved July 20, 2016