

**ADOPTED REGULATION OF THE
BUREAU OF SERVICES TO THE BLIND
AND VISUALLY IMPAIRED**

LCB File No. R091-00

Effective September 25, 2000

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 2 and 6-54, NRS 426.560 and 426.670; §§3-5, NRS 426.560, 426.670 and 426.675.

Section 1. Chapter 426 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Administrator” means the administrator of the division.*

Sec. 3. 1. *The bureau will:*

(a) Cause an audit to be conducted biennially for each vending facility with gross revenues of \$150,000 or more; and

(b) Enter into a contract with an accounting firm selected by the bureau to perform the audits.

2. The chief, in consultation with the Nevada committee of blind vendors, shall develop policies and procedures for the conduct of the audit.

3. The bureau will pay for the audit from money in the business enterprise account for the blind.

Sec. 4. 1. *The bureau will pay each licensed operator not less than \$5,000 annually as a retirement income benefit if:*

(a) A majority of the Nevada committee of blind vendors approves the payment; and

(b) The bureau determines that money for the payment is available in the business enterprise account for the blind.

2. The bureau, in consultation with the Nevada committee of blind vendors, will develop policies and procedures to determine:

(a) The eligibility of an operator to receive the retirement income benefit pursuant to this section; and

(b) The amount of money to be paid to an operator who is eligible to receive a retirement income benefit pursuant to this section.

Sec. 5. 1. *The bureau will make available not less than \$10,000 annually for each operator of a vending facility for the purpose of reimbursing each operator for health care costs that are not paid by a third-party insurer if:*

(a) A majority of the Nevada committee of blind vendors approves the amount to be made available; and

(b) The legislature appropriates money for such a purpose.

2. The bureau, in consultation with the Nevada committee of blind vendors, will establish policies and procedures relating to:

(a) The eligibility of an operator to receive a reimbursement for health care costs pursuant to this section; and

(b) The process the bureau and such an operator will follow for reimbursement of health care costs pursuant to this section.

Sec. 6. NAC 426.010 is hereby amended to read as follows:

426.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 426.015 to 426.055, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 426.040 is hereby amended to read as follows:

426.040 “Net proceeds” means the amount of money which remains of the gross income after an operator has deducted the ordinary and necessary expenses of his business, excluding the money which he is required to ~~pay to the bureau~~ *set aside* pursuant to NAC 426.230.

Sec. 8. NAC 426.042 is hereby amended to read as follows:

426.042 “Net profit” means the amount of money which remains in the net proceeds after an operator deducts the money which he is required to ~~pay to the bureau~~ *set aside* pursuant to NAC 426.230.

Sec. 9. NAC 426.070 is hereby amended to read as follows:

426.070 The bureau will furnish a copy of this chapter to each operator and to each person who is licensed to operate a vending facility in ~~a~~ *the* medium of his choice . ~~if the medium is available.~~

Sec. 10. NAC 426.100 is hereby amended to read as follows:

426.100 A blind person may apply to the bureau for an assessment of his ability to operate a vending facility ~~if~~ *if*:

- 1. He is a client of the bureau; and*
- 2. The bureau has determined he is eligible for vocational rehabilitation services.*

Sec. 11. NAC 426.105 is hereby amended to read as follows:

426.105 A blind person may be enrolled in the training program for operators offered by the bureau if the chief determines that ~~if~~:

~~—1. The person would benefit from and complete the program;~~

~~—2. Upon completion of the program, the person would be qualified to operate a vending facility; and~~

~~—3. In addition to meeting} *the person:*~~

1. Meets the requirements of age and citizenship for a license to operate a vending facility ~~};~~
~~the person:~~

~~—(a)} ;~~

2. Is physically and emotionally qualified to operate a vending facility, based upon evaluations of the ~~{person's}~~ medical, psychological and vocational condition *of the person* which are on file with the bureau or submitted to the bureau for purposes of the assessment ~~};~~

~~—(b)} ;~~

3. Possesses the skills in communications, mathematics, mobility, personal grooming and independent living which are necessary for the performance of the duties and responsibilities of an operator ~~};~~

~~—(c)} ;~~

4. Possesses the ability for self-employment ~~};~~

~~—(d)} ;~~

5. Possesses the ability to maintain good relations with customers, the bureau and the agency which controls the premises where the vending facility is located ~~};~~;

6. Would benefit from and complete the program; and

7. Upon completion of the program, would be qualified to operate a vending facility.

Sec. 12. NAC 426.115 is hereby amended to read as follows:

426.115 The bureau ~~will~~ *may* issue to a blind person a license to operate a vending facility if the following documents have been submitted to the bureau by or on behalf of the blind person:

1. A report of an ophthalmological or optometric examination which establishes that the person is legally blind. The report must have been obtained within 1 year before the proposed date for issuance of the license or must confirm the existence of permanent legal blindness regardless of the date of the report.

2. A report of a general medical examination which establishes that the person is physically capable of performing the duties required of an operator. The report must have been obtained within 1 year before the proposed date for issuance of the license.

3. A report of a psychological examination which establishes that the person is mentally and emotionally capable of performing the duties required of an operator. The report must have been obtained within 1 year before the proposed date for issuance of the license.

4. A report which establishes that the person is capable with regard to spatial orientation and mobility.

5. Proof of citizenship in the United States by submission of a birth certificate or certificate of naturalization.

6. A certificate by an authorized employee of the bureau that the person has successfully completed the training required by the bureau. Copies of the applicant's reports of progress which were issued during such training must be attached to the certificate.

Sec. 13. NAC 426.135 is hereby amended to read as follows:

426.135 *1.* A license to operate a vending facility automatically terminates if the licensee:

~~1.)~~ *(a)* Ceases to be a citizen of the United States ~~1.~~

~~—2.];~~

(b) Ceases to be a blind person ~~[-~~

~~—3.— Submits to the bureau his resignation as an operator. Such a termination is effective upon the effective date of his resignation.~~

~~—4.]; or~~

(c) Surrenders his license to the bureau.

2. If a licensee submits his resignation as an operator to the bureau, his license terminates on the date established by the chief.

Sec. 14. NAC 426.140 is hereby amended to read as follows:

426.140 1. Each of the following acts by an operator constitutes a ground for suspension or revocation of his license:

(a) Abandonment of a vending facility. A vending facility shall be deemed to be abandoned if the operator has been absent from the vending facility without the authorization of the bureau and the facility has been closed for 3 consecutive working days or more.

(b) Failure to operate a vending facility in accordance with:

(1) Any applicable law or regulation;

(2) The operating agreement; or

(3) The permit given by the public agency or private person who has control of the premises where the vending facility is located.

(c) Failure to maintain the equipment ~~[which]~~ *that* is located at his vending facility in good condition.

(d) Misconduct, including ~~[-]~~, *without limitation:*

(1) Fraud, misappropriation or conversion.

(2) Use of alcoholic beverages or illicit drugs ~~[which impair his performance]~~ while on duty.

(3) Embezzlement.

(4) Submission of a false report to the bureau.

(5) Failure to submit to a medical, psychological, ~~[or]~~ ophthalmological *or other* examination when requested to do so by the bureau. The bureau will pay for the cost of such an examination.

(6) Other behavior ~~[which]~~ *that* seriously jeopardizes the operation of the vending facility.

(e) Failure to pay obligations incurred in the operation of the vending facility when payments on those obligations are due.

(f) Failure to pay to the bureau when due the money ~~[which]~~ *that* he is required to pay pursuant to NAC 426.230 or 426.235.

(g) Failure to obtain the insurance required by the operating agreement, or to pay the insurance premiums when they become due.

(h) Failure to ~~[engage personally in the daily operation of his vending facility.]~~ *be physically present at the facility pursuant to NAC 426.395.*

(i) Failure to maintain the records of the business operations of the vending facility ~~[which]~~ *that* he is required to maintain pursuant to NAC 426.250.

(j) Refusal to permit the inspection, review or audit of the records of the business operations of the vending facility by authorized representatives of the bureau.

(k) Failure or refusal to comply with the requirements of continuing education or training, or to receive counseling or vocational rehabilitation pursuant to NAC 426.123.

2. The chief ~~[with]~~ *may* suspend or revoke the license of an operator if he determines that the operator does not possess the personal attributes which were required for his enrollment in the training program for operators offered by the bureau.

Sec. 15. NAC 426.145 is hereby amended to read as follows:

426.145 If the bureau determines that the conduct of an operator requires suspension or revocation of his license, or the termination of his operating agreement before the expiration of the period specified in the agreement, the bureau will provide to the operator an opportunity to *present evidence to the bureau which tends to* show that he is in compliance with all requirements for retention of his license or operating agreement ~~[]~~ *through the process for review of administrative complaints set forth in NAC 426.416 to 426.475, inclusive.* The bureau will provide to the operator notice of that opportunity and will set forth in the notice the grounds for the suspension or revocation of his license, or termination of his operating agreement.

Sec. 16. NAC 426.150 is hereby amended to read as follows:

426.150 1. Except as otherwise provided in subsection 2, a blind person who is licensed to operate a vending facility may apply to operate a particular vending facility.

2. Except as otherwise provided in subsection 3, a blind person who is licensed to operate a vending facility may not apply to operate a particular vending facility if:

(a) He has managed or operated a facility for less than 6 months; or

(b) He fails to comply with the requirements for the operation of the vending facility ~~[which]~~ *that* are set forth in the notice of vacancy for the facility.

3. The chief ~~[with]~~ *may* waive the limitations set forth in subsection 2 if he determines that there is not a sufficient number of eligible applicants for the operation of the vending facility.

Sec. 17. NAC 426.160 is hereby amended to read as follows:

426.160 If two or more persons who are licensed to operate a vending facility have submitted an application to the bureau, a person employed by the bureau as an officer of field operations will appoint an advisory committee to select an operator. The committee ~~[will consist of three members:]~~ *must include:*

- 1. To the extent possible, at least three persons representing the management of the building in which the vending facility is to be located; and*
- 2. One person who is a member of the Nevada committee of blind vendors who serves only as an observer to the selection process.*

Sec. 18. NAC 426.180 is hereby amended to read as follows:

426.180 1. An operating agreement grants to the operator, for a specified period, ~~fa~~ ~~possessory interest in]~~ the *right to use a* vending facility and the equipment included with the vending facility.

2. The bureau will offer an operating agreement and all documents relating to the agreement to a person who has been selected to operate a vending facility. The person who is selected must sign the operating agreement before he takes possession of the vending facility.

3. Except as otherwise provided in this subsection, an operating agreement terminates automatically upon expiration of the period specified in the agreement. The bureau may, in accordance with NAC 426.145, terminate an operating agreement before the expiration of the specified period if the operator fails to comply with the provisions of the operating agreement, this chapter or chapter 426 of NRS. The bureau may suspend an operating agreement for 90 days if an operator has made continuous clerical errors on reports that he is required to submit to the bureau. The operator may continue to operate his vending facility during the 90-day period, but shall cooperate with the bureau to improve the reports which he submits.

Sec. 19. NAC 426.185 is hereby amended to read as follows:

426.185 1. An operating agreement must include three parts as follows:

(a) Part A must grant to the operator, for a specified period, ~~[a possessory interest in]~~ *the right to use* a particular vending facility and in any equipment included with the facility.

(b) Part B must include the terms and conditions of operation ~~[which]~~ *that* are required by this chapter, including, but not limited to:

(1) The days and hours of operation;

(2) A description of the types of goods and services that may be offered at the vending facility ~~[, as set forth in]~~ *pursuant to* NAC 426.335;

(3) The insurance coverage required pursuant to NAC 426.196;

(4) The liability of the operator pursuant to NAC 426.201;

(5) The option to purchase retained by the bureau pursuant to NAC 426.355;

(6) The procedure for administrative review set forth in NAC 426.416 to 426.500, inclusive; and

(7) The employment status of the operator pursuant to NAC 426.067.

(c) Part C must include any special agreements ~~[which]~~ *that* relate to the terms and conditions of the operation of the vending facility, including, but not limited to, standards of operation and special approval required for the operation of the facility.

2. Any part of an operating agreement may be modified in a manner prescribed by the bureau. If the entire operating agreement is not modified, the provisions ~~[which]~~ *that* were not modified remain valid.

Sec. 20. NAC 426.196 is hereby amended to read as follows:

426.196 ~~[1.]~~ The bureau will ~~[provide]~~ :

1. *Provide* fire insurance and ~~[other]~~ *storekeeper's liability* insurance as may be necessary for all vending facilities ~~[which are located in or on public buildings or properties. The bureau will:~~

~~—(a)];~~

2. Prescribe in each operating agreement the insurance that is required for the vending facility covered by the agreement, including the insurance that the operator is required to obtain; ~~[and~~

~~—(b)]~~ 3. Respond within 30 days to all written inquiries from an operator concerning the requirements of insurance for the vending facility ~~;~~

~~—2. The operator shall:~~

~~—(a) Obtain each policy of insurance that he is required to obtain pursuant to the operating agreement;~~

~~—(b) Upon approval of the bureau, obtain any additional policies of insurance that he considers necessary for the vending facility;~~

~~—(c)] ; and~~

4. Ensure that each policy of insurance names the bureau as an additional insured . ~~;~~

~~—(d) Provide to the bureau a copy of each policy of insurance; and~~

~~—(e) Immediately notify the bureau if any policy of insurance is canceled by an insurer or operator.]~~

Sec. 21. NAC 426.201 is hereby amended to read as follows:

426.201 ~~[1.—The bureau will not, unless otherwise required by statute, assume liability for the willful or negligent acts of an operator or of his employees or agents, which cause injury or damage to persons or property.~~

~~—2.]~~ An operator shall, unless otherwise required by statute ~~[, assume]~~ :

1. *Assume* liability for his willful or negligent acts, or the willful or negligent acts of his employees or agents, ~~[which]~~ *that* cause injury or damage to persons or property ~~[,]~~ ; *and*

2. *Hold the bureau harmless for any such acts.*

Sec. 22. NAC 426.222 is hereby amended to read as follows:

426.222 A payment required by this chapter must be drawn on the business account ~~for~~ ~~personal-account]~~ of an operator. ~~[Payments which are made,]~~ *A payment that is made*, other than ~~[payments]~~ *a payment* for a business deduction, must be recorded as a personal expense on the monthly balance sheet maintained by the operator.

Sec. 23. NAC 426.223 is hereby amended to read as follows:

426.223 A report or payment required by this chapter must be submitted to the bureau not later than 20 days after the close of business on the last day of the calendar month covered by the payment or report. A report or payment must be submitted to the ~~[Bureau of Services to the Blind and Visually Impaired, 505 East King Street, Room 501, Carson City, Nevada 89710.]~~ *bureau.*

Sec. 24. NAC 426.224 is hereby amended to read as follows:

426.224 1. Except as otherwise provided in subsection 5, if a payment or report required by this chapter is not received by the bureau on the date it is due, the bureau will assess a penalty of \$50 or 15 percent of the amount due, whichever is greater. The bureau will determine whether a payment or report is received by the bureau on the date that it is due in accordance with NRS 238.100.

2. The bureau will mail to the last known address of the operator by certified mail, return receipt requested, or personally deliver to the operator, notice that a penalty has been assessed.

3. A penalty must be paid not more than ~~10~~ 30 days after the operator receives notice of the penalty. Except as otherwise provided in subsection 5, if a penalty is not paid, the bureau will assess an additional penalty of \$50 or 15 percent of the amount due, whichever is ~~greater,~~ *less*, excluding the amount due for the first penalty.

4. If, in a 1-year period, three reports, payments or penalties are not submitted to the bureau when they are due, *the bureau may terminate* the operating agreement between the bureau and the operator ~~will automatically terminate~~ without *prior* notice ~~to the operator~~.

5. The chief ~~will~~ *may* waive the assessment of a penalty pursuant to this section if the operator submits a request for a waiver which includes the reasons for the late payment, report or penalty.

Sec. 25. NAC 426.225 is hereby amended to read as follows:

426.225 1. The chief ~~will~~ *shall* assign to an operator revenue which is accrued from vending machines that are in direct competition with the vending facility of the operator.

2. The chief may assign to an operator commissions which are accrued from vending machines that are not in direct competition with the ~~operator's facility,~~ *vending facility of the operator* to supplement the income of the operator for not more than 6 months. The bureau will develop and publish a policy for determining the amount of commissions that may be assigned pursuant to this subsection.

3. For the purpose of this section, if vending machines are not easily accessible to the employees in the building occupied by the ~~operator's facility,~~ *vending facility of the operator*, the machines are not considered to be in direct competition with the ~~operator's facility,~~ *vending facility of the operator*.

Sec. 26. NAC 426.230 is hereby amended to read as follows:

426.230 1. To provide the money ~~[which]~~ *that* is necessary for the administration of the program for vending facilities, each operator shall set aside money , *to be deposited by the bureau in the business enterprise account for the blind*, from the monthly net proceeds of his business in accordance with the following table:

| Net Proceeds of Business | Amount to Be Set Aside |
|--------------------------|--|
| \$0 to \$1,100..... | 2 percent of net proceeds |
| 1,101 to 1,350..... | \$25 plus 5 percent of net proceeds over \$1,100 |
| 1,351 to 1,800..... | \$35 plus 10 percent of net proceeds over \$1,350 |
| 1,801 to 2,250..... | \$80 plus 15 percent of net proceeds over \$1,800 |
| 2,251 to 2,800..... | \$150 plus 20 percent of net proceeds over \$2,250 |
| 2,801 to 3,600..... | \$260 plus 30 percent of net proceeds over \$2,800 |
| 3,601 to 5,000..... | \$500 plus 40 percent of net proceeds over \$3,600 |
| Over \$5,000..... | \$1,045 plus 50 percent of net proceeds over \$5,000 |

2. The chief, after consultation with the Nevada committee of blind vendors, ~~[will]~~ *shall* periodically review the table in subsection 1.

3. The chief, after consultation with the Nevada committee of blind vendors, may waive or reduce the amount of money required to be set aside pursuant to subsection 1 for a time prescribed by the chief. If the chief, after consultation with the Nevada committee of blind vendors, decides to waive or reduce this amount of money, the chief shall notify each operator

for whom the amount is being waived or reduced on or before the last day of the month for which the amount is waived or reduced.

Sec. 27. NAC 426.235 is hereby amended to read as follows:

426.235 1. The bureau may advance money to an operator from the business enterprise account for the blind to purchase initial stock of merchandise, supplies and equipment ~~[which]~~ *that* are necessary to begin the operation of a vending facility. The operator shall execute a promissory note for the amount to be repaid to the bureau. The repayment must be made in monthly installments, based upon the adjusted net proceeds of the ~~[operator's]~~ business *of the operator* in accordance with the following table:

| Adjusted Net Proceeds | Installment Required |
|-----------------------|---|
| \$0 to \$1,000..... | 10 percent of the amount |
| 1,001 to 2,000..... | \$100 plus 15 percent of the adjusted net proceeds over \$1,000 |
| 2,001 to 3,000..... | \$250 plus 20 percent of the adjusted net proceeds over \$2,000 |
| 3,001 to 4,000..... | \$450 plus 30 percent of the adjusted net proceeds over \$3,000 |
| 4,001 to 5,000..... | \$750 plus 40 percent of the adjusted net proceeds over \$4,000 |
| Over \$5,000..... | \$1,150 plus 50 percent of the adjusted net proceeds over \$5,000 |

2. The bureau may advance money to an operator from the business enterprise account for the blind in exchange for a promissory note to ensure the continued operation of an existing vending facility. Such an advance must be repaid by the operator in accordance with the terms and conditions of the promissory note.

3. *As used in this section, “adjusted net proceeds” means the amount of money that remains of the gross income after an operator has deducted the ordinary and necessary expenses of his business and includes, without limitation, the amount of money set aside pursuant to NAC 426.230.*

Sec. 28. NAC 426.265 is hereby amended to read as follows:

426.265 1. Each operator shall maintain the records ~~[of]~~, *correspondence and other documents relating to* his business operation in the area where the vending facility is located and make the records available to an authorized representative of the bureau, with or without notice, for inspection ~~[or audit.]~~, *audit or other purpose*. Upon issuance of a receipt for records, the operator shall surrender his records to a representative of the bureau for audit. The receipt must specify the date on which the records ~~[will]~~ *must* be returned to the operator and include the signature of the representative of the bureau who receives the records. After an audit by the bureau, an operator shall, if requested by the bureau, correct the records in accordance with the ~~[bureau’s instructions.]~~ *instructions of the bureau*. Each operator shall maintain the records of his business operation for 5 years after the end of the calendar year covered by the records.

2. *The bureau may request any records, correspondence or other documents of an operator that are necessary for the operation or management of the vending facility or the performance of the operator.*

Sec. 29. NAC 426.270 is hereby amended to read as follows:

426.270 1. Each operator shall establish and maintain a checking account for his business. The account must be in a commercial bank which is authorized to do business in this state and offers electronic access to banking services. The operator shall not commingle his business and personal money in the business checking account.

2. Each operator shall maintain cash in an amount which is sufficient to pay all monthly obligations of his vending facility without diminishing ~~his~~ *the* net worth ~~of his business~~.

3. If an operator maintains a negative balance in his checking account or issues a check without sufficient money in the checking account, the bureau may terminate his operating agreement.

Sec. 30. NAC 426.285 is hereby amended to read as follows:

426.285 Unless the chief provides *prior* written approval to an operator, ordinary and necessary expenses of the business of an operator do not include:

1. Expenses for accounting services not related to the business.
2. Attorney's fees and related expenses.
3. Charges for bank overdraft or return of checks.
4. Charges for the use of credit cards except as permitted by this chapter.
5. Costs of commuting to and from work, including parking fees, for the operator or his employees.
6. Contributions or gifts to organizations or customers.
7. Costs of aids, appliances or other equipment furnished to the operator through the program for vocational rehabilitation offered by the bureau.
8. Costs of replacing merchandise which is destroyed because of spoilage, theft or other circumstances.
9. Costs of maintenance, replacement or repair of equipment which is owned by the bureau.
10. Costs of maintenance, replacement or repair of equipment which is owned by the operator and used at the vending facility.

11. Costs of markup of an item of merchandise which is over the actual cost of the item, if the item was purchased from a firm and the markup directly or indirectly benefits the operator.

12. Allowances for employees' meals.

13. Penalties paid to an agency which imposes taxes or issues a license.

14. Personal expenses, including, but not limited to:

(a) Charges for personal clothing.

(b) Premiums for health, medical or disability insurance for the operator or his family.

(c) Payments for personal income tax, including payments for estimated taxes.

(d) Premiums for life insurance or payments for a retirement program for the operator.

(e) Any other expenses which are personal.

15. The purchase price of or rental payments for equipment which has not been authorized by the bureau.

16. Payments to the bureau pursuant to a promissory note for any money advanced to establish a vending facility.

17. Travel expenses.

18. Depreciation of the equipment owned by the operator.

19. Expenses for rent or utilities at a location other than the facility.

20. Losses incurred for an extension of credit that was not approved by the bureau.

Sec. 31. NAC 426.300 is hereby amended to read as follows:

426.300 1. The bureau will furnish to each vending facility equipment ~~which~~ *that* is suitable for the facility. The bureau will assume responsibility for all the normal repair and replacement of that equipment.

2. ~~[An operator may submit to the bureau a written proposal to assume responsibility for the maintenance and repair of the equipment which was furnished by the bureau. If the proposal is approved, the cost of the maintenance and repair may be deducted as an operating expense of the business. Copies of itemized bills for any repairs must be attached to the monthly statement of profit and loss on which the expense is deducted.]~~

~~—3.]~~ If the bureau determines that it is necessary or appropriate, ~~[it]~~ *the bureau* will:

(a) Replace equipment located at a vending facility, if money is available in the business enterprise account for the blind.

(b) Provide additional equipment at a vending facility, if money is available in the business enterprise account for the blind.

(c) Provide written authorization to an operator to purchase equipment specified in the authorization.

~~[4.]~~ 3. An operator shall not add to, modify, remove or replace *any* equipment ~~[which has been provided by the bureau]~~ without the written consent of the bureau.

Sec. 32. NAC 426.305 is hereby amended to read as follows:

426.305 An operator shall assume responsibility for the daily maintenance of the equipment furnished by the bureau . ~~[and shall provide the care which is necessary to maintain the equipment in good condition, excluding ordinary wear.]~~ The operator shall pay for any repairs ~~[which have resulted]~~ *that result* from his neglect or abuse of the equipment.

Sec. 33. NAC 426.315 is hereby amended to read as follows:

426.315 Equipment ~~[which]~~ *that* has been furnished by the bureau or authorized for purchase ~~[may]~~ *must* be used only for the business of the vending facility.

Sec. 34. NAC 426.320 is hereby amended to read as follows:

426.320 1. Except for the ~~possessory interest~~ *right to use the equipment that is* granted to the operator pursuant to NAC 426.180, the bureau retains all right to, title to and interest in the equipment it furnishes for the operation of a vending facility.

2. The operator shall surrender possession of the equipment:

(a) Upon termination, suspension or revocation of his license; or

(b) If he is required to do so by the terms of the operating agreement.

Sec. 35. NAC 426.326 is hereby amended to read as follows:

426.326 1. An operator shall obtain the items of merchandise, accessories and supplies ~~which~~ *that* are necessary to begin operation of his vending facility. An operator shall deduct the value of those items of merchandise, accessories and supplies as a business expense if the deduction will not result in a negative balance in his net proceeds. Any amount ~~which~~ *that* is not deducted must be shown as an asset on the monthly balance sheet maintained by the operator until it is liquidated.

2. An operator shall obtain items of merchandise, accessories and supplies in quantities ~~which~~ *that* are sufficient to ensure the continued operation of his vending facility.

3. ~~At the end of each calendar quarter,~~ *On an annual basis and at any other time prescribed by the chief,* an operator shall conduct a physical inventory of the items of merchandise, accessories and supplies ~~which~~ *that* he has in his possession for resale, and record the results of the inventory in his books and records of account. A copy of the results of the inventory must be included with the monthly report that the operator is required to submit to the bureau pursuant to NAC 426.255.

Sec. 36. NAC 426.330 is hereby amended to read as follows:

426.330 Each operator shall acknowledge the receipt of the equipment, accessories and initial stock of merchandise furnished by the bureau. ~~[To maintain proper control over those items, the operator shall sign an acknowledgment of his receipt of the initial items and shall]~~ *The bureau will* maintain a record of any changes to those items ~~[upon forms prescribed by the bureau. Each form, if approved,]~~ *and will provide the operator with a copy of such a record. Each record* must be signed and dated by an authorized representative of the bureau.

Sec. 37. NAC 426.335 is hereby amended to read as follows:

426.335 1. Each operating agreement must specify the goods and services ~~[which]~~ *that* may be sold at the vending facility covered by the agreement.

2. ~~[The goods and services which may be sold at a vending facility include, but are not limited to:~~

~~—(a) Newspapers, periodicals, publications, postcards, greeting cards, confections, tobacco products, hot and cold beverages, food, film and film products, souvenir and gift items, and sundries.~~

~~—(b) Any other goods or services that the chief, after consultation with the head of the public agency or the private person responsible for the management of the property, determines is suitable for the location.~~

~~—3.]~~ The goods and services offered at a vending facility may be dispensed automatically or manually and may be prepared on or off the premises.

~~[4.]~~ 3. Goods and services ~~[may]~~ *must* not be sold, offered for sale or dispensed unless they have been approved in writing by the chief.

Sec. 38. NAC 426.345 is hereby amended to read as follows:

426.345 1. ~~[Within 60 days before the expiration of an operating agreement, each operator, or a person designated by the operator, and an authorized representative of the bureau shall conduct a physical inventory of all equipment which has been furnished by the bureau. Unless it is the first inventory, the inventory must be reconciled with the last physical inventory of equipment.~~

~~—2.]~~ Each operator, or a person designated by the operator, and an authorized representative of the bureau shall conduct a physical inventory of all equipment, accessories and merchandise of a vending facility if:

- (a) The operator is transferred or promoted to another location;
- (b) The operator resigns from the program for vending facilities administered by the bureau;
- (c) The operator surrenders his license to the bureau; or
- (d) The operating agreement expires and is not renewed, and a final settlement between the operator and the bureau is necessary.

~~[3.]~~ 2. If an operator refuses to participate in the inventories required by ~~[subsections 1 and 2.]~~ *subsection 1*, or refuses to designate a representative for such purpose, the bureau will appoint an independent person to represent the operator. ~~[Except as otherwise provided in subsection 4, all]~~ *All* equipment and accessories furnished by the bureau must be counted and reconciled with the master inventory maintained by the bureau.

~~[4.—The following items must be excluded from the physical inventory of equipment, merchandise and accessories:~~

~~—(a) Accessories which are damaged;~~

~~—(b) Items of merchandise which are stored in containers that expose the items to possible contamination;~~

- ~~—(c) Products which are stale, damaged or outdated;~~
- ~~—(d) Accessories and supplies which are not used in the operation of the vending facility;~~
- ~~—(e) Food in open containers;~~
- ~~—(f) Meat which is wrapped in plastic;~~
- ~~—(g) Articles which are not authorized for sale in the operating agreement; and~~
- ~~—(h) Any other accessory or item of merchandise if the operator cannot produce a document showing that he purchased it.]~~

3. The former operator and the new operator or the bureau shall negotiate, with the assistance of the staff of the bureau, the value of the equipment, accessories and merchandise of a vending facility.

Sec. 39. NAC 426.355 is hereby amended to read as follows:

426.355 1. Each operating agreement must include a provision which reserves for the bureau an option to purchase any equipment, accessories, supplies and merchandise owned by the operator for use in the vending facility and to assign this option to a succeeding operator of the vending facility. At the time the option is exercised, the merchandise, accessories and supplies must be inventoried and valued in the manner provided in NAC 426.345 . ~~and 426.350.]~~ Equipment owned by the operator may be purchased by the bureau at its fair market value.

2. If an operator withdraws from the program for vending facilities administered by the bureau and the bureau purchases his equipment, accessories, supplies or merchandise, the bureau will reimburse the operator for the equipment, accessories, supplies or merchandise not later than 60 days after the expiration of his operating agreement unless a purchase agreement has been

executed and notarized between the operator and the bureau which establishes an alternative payment schedule.

Sec. 40. NAC 426.357 is hereby amended to read as follows:

426.357 1. Upon the rescission or termination of an operating agreement, or the suspension, revocation or termination of a license, the operator shall vacate the premises of the vending facility and surrender possession of all equipment, accessories, merchandise, supplies and other assets which the bureau owns or has an option to purchase.

2. If the operator fails to surrender the premises and assets, the bureau will take such action as is necessary to obtain possession. The operator may enter the premises to remove his personal property or, *upon the written request of the operator and* at his expense, the bureau will deliver the property to him or place it in storage.

Sec. 41. NAC 426.360 is hereby amended to read as follows:

426.360 The operator shall not ~~encumber~~ *cause* or allow ~~the encumbrance of~~ *a lien, a claim or any other encumbrance to be placed on* his vending facility or any of its equipment, accessories, merchandise, supplies or other assets.

Sec. 42. NAC 426.365 is hereby amended to read as follows:

426.365 ~~(1.)~~ Each operator shall ~~(2.)~~
~~(a)~~, *subject to the approval of the chief:*

1. Employ and compensate such employees as are necessary for the effective and efficient operation of the vending facility.

~~(b)~~ *2.* Employ and compensate a relief operator to ensure the continuous operation of the vending facility during an absence of the operator.

~~[(e)]~~ 3. To avoid unnecessary and excessive costs, limit the number of persons that he employs and their hours of employment and compensation. Compensation of these employees must not exceed the prevailing wage which is paid to employees who have similar duties in the geographic area of the vending facility.

~~[(d)]~~ 4. Terminate the employment of any person whose continued employment is detrimental to the operation of the business.

~~[(e) Request from the bureau any available list of persons who are eligible for employment.~~

~~[(f)]~~ 5. Upon request, provide to the bureau a written description of the duties of each employee.

~~[(2) In considering the employment of persons, the operator shall observe the following order of preference:~~

~~—(a) Persons who are licensed to operate a vending facility.~~

~~—(b) Other blind or visually impaired persons who are qualified to be employed at a vending facility.~~

~~—(c) Persons who are physically disabled and qualified to be employed at a vending facility.~~

~~—(d) Persons who are not disabled and are qualified to be employed at a vending facility.~~

~~—(e) Family members who are qualified to be employed at a vending facility.]~~

6. *Conduct his business in a manner that satisfies his customers.*

7. *Avoid any practices that are inconsistent with this section.*

8. *Except for supervision or management that the bureau is required to provide, make all decisions concerning the management and daily operations of his vending facility.*

9. *Maintain a clean appearance and ensure that his employees maintain a clean appearance.*

Sec. 43. NAC 426.390 is hereby amended to read as follows:

426.390 1. Except as otherwise provided in subsection 2, an operator may take not more than 30 calendar days of vacation each calendar year. He shall notify the bureau and provide assurance that the operation of the vending facility will continue under the guidance of a qualified relief operator. The operator may report the wages which he pays to the relief operator as a business expense.

2. The chief ~~[will,]~~ **may**, if he determines that special circumstances exist, authorize additional leave of absence.

Sec. 44. NAC 426.395 is hereby amended to read as follows:

426.395 ~~[1.—Except for supervision or management which the bureau is required to provide, the operator of a vending facility shall make all decisions concerning the management of his facility and the daily operation of the facility.~~

~~—2.]~~ An operator ~~[shall not be absent from his vending facility on a routine basis.]~~ **must be physically present at the vending facility for a minimum of 6 hours per day, unless the operator has received prior approval from the chief to be physically present at the vending facility for fewer than 6 hours per day.**

Sec. 45. NAC 426.400 is hereby amended to read as follows:

426.400 1. The bureau will assist each operator in the efficient and effective management of each vending facility.

2. The bureau will provide to each operator of a vending facility managerial services concerning marketing, merchandising, pricing, maintenance of records, preparing reports, supervising personnel and other business procedures.

3. The bureau will ~~[periodically evaluate]~~ :

(a) *Evaluate* the performance of each operator *each quarter or more frequently if necessary* and determine whether any further business training is necessary ~~is~~ ;

(b) *Submit to the chief a report of the findings of each evaluation; and*

(c) *Include in each report recommendations for additional business training or other necessary actions.*

Sec. 46. NAC 426.416 is hereby amended to read as follows:

426.416 1. A person who is licensed to operate a vending facility may submit a written request to the chief for an administrative review of a complaint if the licensee:

(a) Has a legitimate grievance with any action of the bureau in the operation or administration of the program for vending facilities; and

(b) Has not resolved the grievance through informal negotiations with an officer of the bureau.

2. Not ~~more~~ *later* than 30 days after the occurrence of the action ~~which~~ *that* is the cause of the ~~licensee's grievance;~~ *grievance of the licensee*, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the ~~Chief of the Bureau of Services to the Blind and Visually Impaired, 505 East King Street, Carson City, Nevada 89710;~~ *chief*.

3. A request for an administrative review must include:

(a) The date of the occurrence of the action which is the cause of the ~~licensee's grievance;~~ *grievance of the licensee;*

(b) A statement of the complaint, including each issue that the licensee considers relevant to the complaint;

(c) A statement of each resolution of the complaint offered by the licensee;

- (d) Citations to the statutes or regulations, if any, which pertain to the complaint;
- (e) A statement which supports the position of the licensee;
- (f) The mailing address and telephone number of the licensee; and
- (g) The signature of the licensee and the date of his signature.

Sec. 47. NAC 426.420 is hereby amended to read as follows:

426.420 The chief ~~{will}~~ *shall* conduct an administrative review at a time and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the licensee, the chief ~~{will}~~ *shall* conduct an administrative review within 10 days after the chief receives a request for an administrative review.

Sec. 48. NAC 426.425 is hereby amended to read as follows:

426.425 An administrative review ~~{will}~~ *must* be:

1. Conducted informally without attorneys or witnesses.
2. Based on the record available , except that the ~~{operator}~~ *licensee* may, upon his request, appear and present additional facts.

Sec. 49. NAC 426.430 is hereby amended to read as follows:

426.430 1. Not ~~{more}~~ *later* than 15 days after an administrative review, the chief ~~{will}~~ *shall* issue a written decision, including his findings of fact and conclusions of law concerning the complaint and any appropriate orders.

2. The bureau will mail the written decision to the licensee by registered or certified mail, return receipt requested, or a representative of the bureau ~~{will}~~ *may* personally deliver the decision to the licensee and read it to him. If the decision is personally delivered to the licensee, ~~{he}~~ *the licensee* shall date and sign a copy of the decision as an acknowledgment of the receipt.

3. The chief ~~[will]~~ *shall* mail a copy of the decision to each member of the Nevada committee of blind vendors.

Sec. 50. NAC 426.450 is hereby amended to read as follows:

426.450 1. Not ~~[more]~~ *later* than 15 days after receipt of a written decision on a complaint, a licensee may submit a written request to the ~~[chief]~~ *administrator* for a hearing on the complaint. The request must be mailed ~~[to the Chief of the Rehabilitation Division, 505 East King Street, Room 502, Carson City, Nevada 89710,]~~ *to the administrator* by certified or registered mail, return receipt requested.

2. The written request for a hearing must include ~~[-~~

~~—(a) A statement of the complaint, including each issue that the licensee considers relevant to the complaint;~~

~~—(b) Citations to the statutes or regulations, if any, which pertain to the complaint;~~

~~—(c) A statement which supports the position of the licensee;~~

~~—(d) The mailing address and telephone number of the licensee; and~~

~~—(e) The signature of the licensee and the date of his signature.]~~ *a copy of the original complaint filed by the licensee.*

Sec. 51. NAC 426.455 is hereby amended to read as follows:

426.455 1. Not ~~[more]~~ *later* than 30 days after the ~~[chief]~~ *administrator* receives a written request for a hearing, a hearing officer appointed by the ~~[chief will]~~ *senior hearings officer of the hearings division of the department of administration shall* conduct a hearing at a time and location that is reasonable for the parties. The hearing officer must have no personal involvement in the complaint.

2. Not less than 10 days before the date of the hearing, the bureau will, in accordance with NRS 233B.121, provide to all parties notice of the time, date and place of the hearing.

Sec. 52. NAC 426.470 is hereby amended to read as follows:

426.470 Each party ~~{will}~~ *must* be granted the opportunity to present his case, examine and cross-examine witnesses, and rebut evidence.

Sec. 53. NAC 426.475 is hereby amended to read as follows:

426.475 Unless otherwise provided by statute, a complaint may be resolved by ~~{stipulation,}~~ *arbitration, mutual agreement of the parties*, settlement, consent decree or default of a party.

Sec. 54. NAC 426.175, 426.240, 426.260, 426.295, 426.350, 426.380 and 426.385 are hereby repealed.

TEXT OF REPEALED SECTIONS

426.175 Use of vending facility for training. (NRS 426.560, 426.670) The bureau may use a vending facility to provide training on the job for blind persons enrolled in the training program offered by the bureau.

426.240 Computation of payments. Whenever any payment is made to the bureau, the payment must be rounded to the nearest dollar.

426.260 Request for records, correspondence or other documents. (NRS 426.560, 426.670) The bureau may request any records, correspondence or other documents of an

operator which are necessary for the operation or management of the vending facility or the performance of the operator.

426.295 Extension of credit by operator. (NRS 426.560, 426.670) An operator shall not extend credit to his customers unless the credit is extended through established credit card accounts.

426.350 Determination of value of items for physical inventory. (NRS 426.560, 426.670) The accessories, supplies and merchandise which are inventoried pursuant to NAC 426.345 must be valued at their cost to the operator.

426.380 Appearance and conduct of operator and employees. (NRS 426.560, 426.670) Each operator and employee of a vending facility shall maintain a clean and wholesome appearance and shall conduct himself in a businesslike manner.

426.385 Relations with customers. (NRS 426.560, 426.670) An operator shall conduct his business in a manner that satisfies his customers and shall avoid any practices which are inconsistent with this section.

NOTICE OF ADOPTION OF REGULATION

The Bureau of Services to the Blind and Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation adopted regulations assigned LCB File No. R091-00 which pertain to chapter 426 of the Nevada Administrative Code on August 25, 2000. A copy of the regulations as adopted is attached hereto.

INFORMATIONAL STATEMENT

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 PETITION LCB FILE R091-00

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 426.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Public comment was solicited via posting of the Notice of Intent to Act Upon Regulation issued by this agency on May 12, 2000. The notice was mailed to and posted in all Bureau of Services to the Blind and Visually Impaired and all public libraries in the State. Additionally, the notice was mailed directly to all blind vendors who participate in the Business Enterprise Program in the media of choice, regular print, large print or braille.

Public hearings were held on June 17, 2000 in Reno at the Washoe County Administrative Building Snack Bar and at Bureau offices at 628 Belrose in Las Vegas. In all, only two blind vendors attended these meetings, both of which attended the Reno session. The proposed changes to the regulation were reviewed and explained in detail. No comment was elicited by these participants.

Subsequent to the public hearings, the proposed regulation was forwarded to staff of the Blind Division of the Rehabilitation Services Administration (RSA) of the U.S. Department of Education, the federal office charged with program oversight. The regulation was also submitted for review by the Regional Office of the RSA in San Francisco. Federal representatives verbally and via e-mail recommended two minor changes which have been incorporated into the regulation.

- (a) NAC 426.140 needs to have the language from 34 CFR 395.7b incorporated. This relates to issuance of a license to be for an indefinite period of time and holding a full evidentiary hearing prior to termination or suspension of the license
- (b) NAC 426.475 needs to have language related to the “availability of arbitration” incorporated.

Both recommendations have been addressed via amendments to the proposed regulation.

2. The number of persons who:

- (a) **Attended each hearing:** 2
- (b) **Testified at each hearing:** 0
- (c) **Submitted to the agency written comments:** 1

The sole comments submitted to the agency can from the Blindness Division of the Rehabilitation Services Administration and, because they were considered by that agency to be minor, were transmitted verbally via e-mail.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of this summary.

The only businesses affected by this regulation are the blind vendors who participate in the program. No external businesses are affected.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation is being adopted with only the two minor changes recommended by the Rehabilitation Services Administration being incorporated therein.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) **Both the adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**
- (a) The proposed revisions are expected to have an immediate and/or long-term beneficial economic effect upon the regulated community
 - (b) There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation. Existing staff will be capable of handling enforcement.

- 7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate. NAC 426 does not overlap the provisions of 34 CFR 395, promulgated by the U.S. Department of Education, Rehabilitation Services Administration.

- 8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

NAC 426 does not include provisions which are more stringent or more restrictive than those contained in federal regulations.

- 9. If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not establish or provide for a new fee. Therefore, no additional funds will be collected.