

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 as follows:

Individuals with Disabilities.

CHAPTER 96. 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 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 individuals with visual impairments and other disabilities and decreasing their reliance on government benefits.

§ 9602. Definitions.

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" or "Agency" means all counties, municipalities, school districts, or any other entity which is supported in whole or in part by funds that the General Assembly appropriated.

(2) "Visual impairment" means central visual acuity that meets 1 of the following criteria:

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

b. If better than 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(3) [Repealed.]

(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 and used for governmental purposes. It does not include public schools or buildings at residential institutions operated by the

State. "Public office building" does not mean a building or property that is used as a public recreational facility, owned or leased by the State, and operated or occupied by the Department of National Resources and Environmental Control or the State Forestry Department. "Public office building" does not mean food service located in or on the property of any public building on the Delaware Turnpike.

(6) [Repealed.]

(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) [Repealed.]

(8) [Repealed.]

§ 9603. Commission for Statewide Contracts to Support Employment for Individuals with Disabilities – Appointment; composition; terms; vacancies; compensation.

(a) The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities is established to fulfill the duties under § 9604 of this title.

(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) [Repealed.]

(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 of this State, information necessary to enable it to carry out this chapter. Upon request of the Chair of the Commission, the head or administrator of such 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. The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities — Powers and duties; community rehabilitation programs and central nonprofit agencies.

(a) The Commission for Statewide Contracts to Support Employment for Individuals with Disabilities shall promote an expanded and constant market for products and services of 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, 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 products manufactured and services provided by a CRP or CNA that are offered for sale to the various Agencies of this State.

(2) The price of a Commission-approved, contracted set-aside shall recover for a CRP or CNA the cost of raw materials, labor, overhead, and delivery. The Commission may do any of the following:

a. Revise such prices from time to time in accordance with changing cost 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. Make such rules and regulations concerning specifications, time of delivery, and other matters of operation as shall be necessary to carry out the purposes of the CRPs or CNAs and this chapter.

(b) The Commission shall create subcommittees to facilitate its work. The subcommittees shall advise the Commission and provide technical assistance to the Commission in areas such as employment practices, sales promotion, public relations, market development, market analysis, and budget preparation.

(c) [Repealed.]

(d) 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 CRPs or CNAs that the Commission recommends as suitable for procurement by Agencies of this State pursuant to this chapter.

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

(b) Agencies of this State shall give preference to procuring any product or service under this chapter to a product or service of the Delaware Industries for the Blind. 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, 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 this State from which procurement of products or services is required under any state law. The Commission and any such Agency are authorized to enter into such contractual agreements, cooperative working relationships, or other arrangements as may 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 of this State.

§ 9606. Food service in public office buildings.

(a) If any 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 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 Agency of this State who requests such service, the Agency may seek food service from another provider.

(b) This section does not impair any contracts by 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 Agency.

(c) This section does not apply to any office building owned or leased by any county or municipal corporation, or any building leased, 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.

(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